

(26,402)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 935.

ERIK SANDBERG, CARL JANNSON, S. K. BENJAMINSEN,
AND JOHN PERANEN, PETITIONERS,

vs.

JOHN McDONALD, CLAIMANT OF THE BRITISH SHIP
"TALUS."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Wednesday, November 21st, A. D. 1917, at New Orleans, Louisiana, Before the Honorable Richard W. Walker and the Honorable Robert L. Batts, Circuit Judges, and the Honorable William I. Grubb, District Judge.

JOHN McDONALD, Claimant of Ship "Talus," Appellant,

versus

ERIK SANDBERG et als., Appellees.

Be it remembered, that heretofore, to-wit, on the 23d day of July, A. D. 1917, a transcript of the record of the above styled
b cause, pursuant to an appeal from the District Court of the United States for the Southern District of Alabama, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3119, as follows:

c TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3119.

JOHN McDONALD, Claimant of Ship Talus, Appellant,

versus

ERIK SANDBERG et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Alabama.

U. S. Circuit Court of Appeals. Filed Jul- 23, 1917. Frank H. Mortimer, clerk.

Name of Court, Style of Cause, etc.

District Court of the United States for the Southern District of
Alabama.

ERIK SANDBERG, CARL JANNSSON, MAGNUS PERSSON, ANDREAS EVAN-
GER, S. K. BENJAMINSEN and JOHN PERANEN

VERSUS

SHIP TALUS, JOHN McDONALD, Claimant and Principal on the Claim
Bond and James J. Feore and A. L. Staples, Sureties on said Claim
Bond.

Notice of Libel Filed and Marshal's Return.

UNITED STATES OF AMERICA:

District Court of the United States for the Southern District of
Alabama:

In Admiralty—No. 1642.

ERIK SANDBERG et al.

VERSUS

SHIP TALUS.

To the Master of said vessel:

You are hereby notified that the above named Erik Sandberg and
five others have this day filed in my office as clerk of said court a libel
against said vessel for wages in the sum of \$306.93.

You are required to forthwith call at my office as such clerk and
give the necessary bonds in the cause or otherwise arrange the matter,
in default of so doing a Writ of Seizure will issue and said vessel
seized by the United States marshal.

2 The United States Marshal of this district, or any of his
deputies, will forthwith execute this notice and make return
thereof according to law.

Witness my hand this 23rd day of February A. D. 1917.

RICHARD JONES, *Clerk.*

Received in office February 24, 1917, and executed by serving a
copy hereof on Capt. McDonell, Master, February 24, 1917.

C. C. GEWIN,

U. S. Marshal,

By D. D. HORTON, *Deputy.*

Filed February 28, 1917. Richard Jones, Clerk.

Claim.

District Court of the United States for the Southern District of
Alabama, Southern Division.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

VERSUS.

SHIP TALUS.

Comes John McDonald, master of said ship Talus, and for J. P. Murphy, owner thereof, intervenes herein and claims possession of said vessel and says that said J. P. Murphy, in whose behalf this claim is made, is the true and bona fide owner of said vessel, and that no other persons are the owners thereof. And claimant further says that he is duly authorized to make this claim for and on behalf of said owner.

JOHN McDONALD.

Subscribed and sworn to before me this 26th day of February A. D. 1917.

LEO M. FLYNN,
Deputy Clerk.

Filed this 26th day of February, 1917. Richard Jones, Clerk, by
Leo M. Flynn, Deputy.

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Claim Bond.

District Court of the United States for the Southern District of
Alabama, Southern Division.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

VS.

SHIP TALUS.

Know All Men by These Presents, That we, John McDonald and James J. Feore and A. L. Staples are held and firmly bound unto Erik Sandberg et al. in the sum of Six Hundred and Thirteen and 86-100 Dollars (\$613.86) lawful money of the United States of America, to be paid to the said Erik Sandberg et al., their executors, administrators, or assigns, to which payment well and truly to be made, we hereby bind ourselves and each of us, jointly and severally, and each of our executors, administrators, heirs, or assigns, firmly

by these presents. Signed and sealed by us on this 26th day of February A. D. 1917.

Whereas, a libel was filed in this Court and cause on the 23rd day of February A. D. 1917, by the said Erik Sandberg et al. against the said ship Talus, in an action civil and maritime for \$306.93 therein alleged to be due and owing to said libellants; now, therefore, the condition of this obligation is that if the above bounden John McDonald, James J. Feore and A. L. Staples shall abide and answer the decree of this court in the premises, or upon appeal, of the appellate court, this obligation to become null and void, otherwise to be and remain in full force and effect.

JOHN McDONALD.	[SEAL.]
JAMES J. FEORE.	[SEAL.]
A. L. STAPLES.	[SEAL.]

Signed, sealed and acknowledged before me this 26th day of February, 1917.

LEO M. FLYNN,
Deputy Clerk.

Filed this 26th day of February, 1917. Richard Jones, Clerk,
by Leo M. Flynn, Deputy Clerk.

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Libel.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Southern District of Alabama, Southern Division.

In Admiralty—No. 1642.

ERIK SANDBERG et al., Libellants,

vs.

BRITISH SHIP TALUS.

To the Honorable Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama, Sitting in Admiralty:

The libel of Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. Benjaminsen and John Peranen against the British full-rigged ship Talus, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of wages, civil and maritime, alleges as follows:

First—That on towit the 6th day of November, 1916, libellant, John Peranen, was employed by the said ship's agents to perform the services of a second-mate; on towit November 30, 1916, libellants, Erik Sandberg, Carl Jansson and Magnus Persson were employed by the said agents to work on said ship as seamen; and on towit

Dec. 8 libellants, Andreas Evanger and S. K. Benjaminsen were employed by the said agents to perform the services of seamen aboard said ship. All of the libellants were employed in Liverpool, and the said ship arrived in Mobile February 13, 1916, and is loading timber, and is bound for a port in the British Isles. Libellants Sandberg, Jansson and Persson were promised seven pounds per month; Evanger and Benjaminsen seven pounds and ten shillings, and as second mate Peranen was promised twelve pounds; and libellants aver that they have well and truly performed the services for which they were thus employed; and Persson further shows that on 5 towit Dec. 12 he was made boatswain, and was promised one pound additional per month, and that he had well and truly performed the services to which he was thus promoted.

Second—That the said ship Talus is now lying at docks in the City of Mobile, in the division and district aforesaid, and is within the admiralty and maritime jurisdiction of this honorable court.

Third—That on towit the 22nd day of February, 1916, in the said Port of Mobile your libellants demanded from the master of the said ship one-half of the wages to which they were entitled under the Seamen's Act, but the master refused to pay them such half portion of the wages earned by them without deducting therefrom certain monies paid to them at Liverpool by way of advances, but stated to libellants that in paying them wages he would take into account such advances; and whilst libellants admit the receipt of such advances and of further payments en route and in the Port of Mobile, they aver that the master has wholly neglected and refused to pay them the one-half wages to which they are entitled under said Seaman's Act.

Fourth—Libellants show further that after deducting said advances and all of the sums received by them on account of their said wages that they are now entitled to be paid the following sums respectively, in American money:

Erik Sandberg	\$40.10
Carl Jansson	\$44.80
S. K. Benjaminsen	\$37.35
Magnus Persson	\$55.43
Andreas Evanger	\$49.20
John Peranen	\$80.05
	<hr/>
	\$306.93

This, because they claim that because of the master's said refusal to comply with said Seaman's Act and to pay them the half of their wages aforesaid, they are now fully discharged from their contract, and ought to be paid such wages in full.

6 That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, libellants pray that process in due form of law, according to the course and practice of this honorable court, as a court of

admiralty and maritime jurisdiction may issue against the said ship Talus, her tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable court may be pleased to decree in favor of libellants, the payment of the several sums hereinbefore claimed; and that the said ship may be condemned and sold to pay libellants' costs and demands, and may further decree that your libellants are forever discharged from any further obligations under their said contract.

ERIK SANDBERG.
CARL A. JANSSON.
MAGNUS PERSSON.
ANDREAS EVANGER.
S. K. BENJAMINSEN.
JOHN PERANEN.

ALEX HOWARD,
Proctor for Libellants.

Before me, Richard Jones, Clerk of the said court, personally appeared Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. Benjaminsen and John Peranen, the libellants named in the above and foregoing libel, who being by me, first duly sworn, upon their respective oaths, depose and say that they know the facts set forth in the above and foregoing libel, and that the same are true; deponents further depose and say that because of their poverty they are unable to give security for the costs or to prepay the costs of instituting and prosecuting the said libel, and pray that they may be allowed to prosecute the same without giving any security therefor; and they further show that they are not residents of the United States of America, but are citizens of various foreign lands, and pray
7 the leave of this honorable court to be permitted to have their cause determined by it in forma pauperis.

ERIK SANDBERG.
CARL A. JANSSON.
MAGNUS PERSSON.
ANDREAS EVANGER.
S. K. BENJAMINSEN.
JOHN PERANEN.

Subscribed and sworn to before me this 23rd day of February, 1917.

RICHARD JONES, *Clerk.*

Filed February 23, 1917. Richard Jones, Clerk.

Amendment to Libel.

In the District Court of the United States for the Southern District of Alabama, Southern Division.

In Admiralty.

ERIK SANDBERG et al., Libellants,

vs.

BRITISH SHIP TALUS.

To the Honorable Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama, Sitting in Admiralty:

Comes libellant, Magnus Persson, and by leave of the court first obtained, amends the third paragraph of the libel in the above entitled cause insofar as it relates to his cause of action by saying that the allegations thereof with regard to the alleged advances did not apply to him for that he did not receive advances as averred therein in any sum whatsoever, but avers that his libel is filed for the reason that on, to wit, the said 22nd day of February, 1916, he made demand upon the master to pay to him one-half of the wages to which he was then and there entitled under the Seaman's Act, but that the master then and there wholly neglected and refused to pay said one-half portion of his wages, and that the master's said refusal was not based upon any deduction from his wages or any advances which had been paid to your libellant, but was an out and out refusal on the master's part to pay said one-half portion.

And libellant further says that the balance of the allegations contained in said libel are true, and that he admits the receipt of the payments on account set forth therein.

MAGNUS PERSSON.

ALEX HOWARD,
Proctor for Libellant.

Before me, Virgil Griffin, Clerk of said Court, personally appeared Magnus Persson, who being by me first duly sworn, upon his oath, deposes and says that the facts set forth in the foregoing amendment to the libel in said cause, are true.

MAGNUS PERSSON.

Subscribed and sworn to before me this 3rd day of March, 1917.

VIRGIL C. GRIFFIN, *Clerk.*

Filed March 5, 1917, by leave of court. Virgil C. Griffin, Clerk,
by Leo M. Flynn, Deputy Clerk.

Answer.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

VS.

BRITISH SHIP TALUS.

The answer of John A. MacDonald, claimant of the said ship Talus to the libel of Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. Benjaminson, and John Perannan, against said ship and to said libel as amended by amendment filed March 5, 1917, respectfully alleges:

First. The claimant admits the allegations of the first paragraph of the original libel, and further shows that the said ship Talus is a British ship duly registered under the laws of the Kingdom of Great Britain and Ireland; that each and all of the libellants are citizens of nations other than the United States of America; and that each and all of the libellants were employed by said ship while she was within the territorial waters of, and within the jurisdiction of, said Kingdom of Great Britain and Ireland, to-wit: in the Port of Liverpool, England, and further that the services for compensation for which this libel is filed were performed by libellants while said ship was within the territorial waters of said Kingdom, or while she was on the high seas, and that said services were not performed either in the territorial waters of, or within the jurisdiction of, the United States, except for to-wit: 11 days, from February 11, 1917, when said ship arrived at Fort Morgan, Alabama, whence she immediately proceeded to the Port of Mobile, to February 22, 1917, during the greater portion of which time said ship was at said Port of Mobile; and that an amount equal to or greater than one-half of any sum of money earned by any and all of the libellants during said last mentioned days was paid to the libellants, respectively, before the filing of this libel.

Second. Claimant admits the allegations of the second paragraph of the original libel.

Third. In answer to the third paragraph of the libel as originally filed and as amended, claimant admits that the master of said ship refused to pay the libellants, with the exception of Libellants Persson and Evanger, as hereinafter shown, one-half of the money earned by such libellants, without deducting therefrom the advances made to said respective libellants in Liverpool, England. The claimant shows that said advances were made in good faith by the ship Talus, a British ship, at the request of the respective libellants, while the

10 ship was in the Port of Liverpool and under and in pursuance to a lawful custom universally obtaining there among British ships to make such advances to an amount equal to or greater than the amount advanced by the ship Talus to these libellants respectively; and that under this custom it is lawful, proper and usual to deduct the amount of such advances from any sums thereafter earned by the seamen respectively. Claimant further shows that after deducting such advances and the moneys and the value of articles received by the libellants respectively from the ship on account of their services after the commencement of their services the ship paid, prior to the filing of the libel, to each of said libellants respectively, on demand, one-half of the sum then earned by such libellants respectively. And claimant denies that the master of the ship has ever failed or refused, on demand, to pay to said libellants or any of them, one-half of the sum then earned by the libellant making such demand, provided the amount of such advance was lawfully deducted from the half of such wages.

The exceptions noted above are: First, that Libellant Persson received no advances in Liverpool, and claimant shows that said Persson, on demand and before the filing of the libel, received one-half of the wages then earned by him after deducting the money and the value of articles received by him from the ship after the commencement of his services and proper charges for his loss of time through absence from the ship while in Mobile. The second exception is that Libellant Evanger, irrespective of the advance made to him while in Liverpool and without deducting such advance, received from the ship, on demand and prior to the filing of the libel, an amount equal to or greater than the amount of wages then earned by him after deducting the money and the value of articles received by him from the ship after the commencement of his services and proper charges for loss of time by him through his absence from the ship while in Mobile. And claimant denies that the master of the ship ever refused, on demand, to pay to said Libellants Persson and Evanger, or to either of them, one-half of the wages then earned by said libellants respectively, without deducting therefrom the wages advanced at Liverpool.

11 Fourth. Claimant denies the allegations of the fourth paragraph of the original libel, and alleges the truth to be that no sum is now due the libellants, or any of them, because upon the payment to them, respectively, of the half of their wages earned by them at the time of their demand therefor, the advances made in Liverpool having been deducted from said one-half except in the cases of Libellants Persson and Evanger, as shown above, each and all of the said libellants, without exception, deserted the ship Talus, and were duly logged as such deserters on the same day, to-wit: the 24th day of February, 1917, and claimant charges that said libellants, by such desertion, forfeited all wages then earned by them and then due to them.

And having fully answered this libel, claimant prays that said libel be dismissed with costs, and that the ship Talus be released.

JOSEPH N. McALEER,
JAMES H. KIRKPATRICK,
Proctors for Claimant.

SOUTHERN DISTRICT OF ALABAMA,
Southern Division:

Before Deputy Clerk of the District Court of the United States for the Southern District of Alabama, personally appeared John A. McDonald, who, being by me first duly sworn, deposes and says that he is the master of the British ship Talus; that the claimant and owner of said ship, Joseph G. Murphy, is a non-resident of the United States, residing in the Dominion of Canada; that affiant is authorized to make the above answer on behalf of said claimant of said ship, and that the facts set up therein are true to the best of the knowledge, information and belief of the affiant.

JOHN A. McDONALD.

Subscribed and sworn to before me this 5th day of April, 1917.

LEO M. FLYNN,
*Deputy Clerk of the District Court of the United
States for the Southern District of Alabama.*

Filed April 5, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn,
Deputy Clerk.

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Opinion.

In the District Court of the United States for the Southern District
of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

VS.

BRITISH SHIP TALUS.

Alex Howard, Proctor for Libellants,
Jos. N. McAleer and Jas. H. Kirkpatrick, Proctors for Claimant.

The libel in this case was filed by the seamen claiming one-half part of the wages which they had earned up to the time of their demand for such part of their wages.

It appears that the libellants were shipped as seamen aboard the British ship Talus in Liverpool, England, and began their services about the first of December, 1916; that the vessel arrived in this port on February 11, and the men were paid some money on account of their wages; that about the 22nd day of February, 1917, libellants,

in the Port of Mobile, demanded one-half part of the wages which they had then earned, and this demand was refused by the master of the Talus, he claiming that the libellants had been paid more than one-half part of the wages then earned by them, because there had been advanced to the libellants, certain sums, when they signed in England.

The question therefore, is the same one presented and ruled on by me in the case of Koskinen vs. The Imberhorne, 240 Fed., in which case, I held that under the provisions of the Seaman's Act, the vessel could not charge against the one-half part of the wages earned by the sailor, an advance made in England at the time of the sailors being signed.

I am now asked to reconsider my conclusion reached in the Imberhorne case, and it is urged upon me that under the provisions of Sections 4530 of the Seaman's Act, that the only part of the
13 wages which the seaman, shipped in a foreign country, is entitled to demand in this country of a foreign vessel, is one half part of such wages as may have been earned after such foreign vessel reaches her port in this country.

The various admiralty courts in this country have had presented to them for consideration many phases of the Seaman's Act, and it is natural that there has been some differences of opinion in its construction.

In the case of The Strathearn, 239 Fed. 583, the libel was dismissed by the judge because he held the demand for wages was made by the seamen before they had been five days in the port of Pensacola. This holding is along the same line as the contention that is now urged upon me, but I cannot agree to that contention.

The whole question depends, of course, upon the proper construction of the terms of the Seaman's Act, as found in 38 Statutes at Large, 1164, which reads as follows:

"Section 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand, from the master of the vessel to which he belongs, one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void; Provided, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of wages earned. * * * And Provided Further, that this section shall apply to seamen of foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." (Bold-faced type mine).

14 "Sec. 10(a) That it shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a

seaman's wages. Any person violating any of the foregoing provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25.00 nor more than \$100.00, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defence to a libel suit or action for the recovery of such wages."

Let us now analyze the language of this Act.

It will be noted in the first place that the Act does not give to the seaman one-half part of such wages as he may earn in every port where such vessel shall load or deliver cargo. The language is that he shall be entitled to receive on demand one-half part of the wages which he shall have then earned. If it had been intended to give to the seaman only a half of such wages as he should earn in each port where the vessel receives or delivers cargo, the language would have been entirely different, and instead of saying the seaman was entitled to one-half part of the wages which he shall have then earned it would have provided that he was entitled to receive one-half part of such wages as he may earn in any port where such vessel received or delivered cargo.

The use of the expression "one-half part of the wages which he shall have then earned" can only indicate that it was the intention of Congress to give seamen the right to demand one-half of
 15 all the wages which such seamen shall have then earned at the time of the demand made.

I grant that there is some confusion in the way the Act is worded because of the placing of the words "at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended." It is hard to word a statute so as to make its provisions absolutely plain and simple and avoid more than one construction, and in wording a statute, words are sometimes put into it in a parenthetical way in a part of a sentence which makes confusion, when they could have been transposed so as to make the meaning more clear.

My own idea is that the words "at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo," were intended to designate the places at which the seamen would have the right to demand their wages, and were not intended to indicate the place at which such wages were earned by the seamen.

Omitting certain of the words for the purpose of making my construction of the statute clear, I rearrange the terms of this part of the Act, so as to express my conclusion as to its meaning, and as so rearranged, it would read as follows:

"A seaman shall be entitled to receive on demand at each port where such vessel shall load or deliver cargo, one-half part of the wages which he shall have then earned. Provided, such demand shall not be made before the expiration of, and not oftener than once in five days."

Again, the whole act must be construed together in order to determine the meaning of any portions thereof, which may be doubtful, if construed alone.

In Section 10, I find the following provisions: "The payment of such advance wages or allotment, shall not in any case, except as hereafter provided, absolve the vessel, or the master, or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defence to a libel suit or action for the recovery of such wages."

16 The reference here about the full payment of wages, "after the same shall have been actually earned," it seems to me, shows that the words used in Section 4530 necessarily have reference to the total wages earned at the time the demand is made, and not to such wages as may be earned by the seaman after the vessel arrives in a port of this country for the purpose of loading or discharging cargo.

I therefore hold that the Act gives to every seaman the right to demand from the vessel at each port where such vessel, during her voyage, loads or delivers cargo, one-half of such wages as the seaman shall, at the time of such demand, have earned; that such seaman cannot demand any wages until at least five days' service has been rendered; that he cannot thereafter again demand the half part of such wages as may be subsequently earned until five days have elapsed from the last or prior payment of one-half of his wages.

I do not think that the vessel must be in port five days before the seaman can make his demand, provided there has been five days or more of service by the sailor since he signed.

I think the words "Provided, such demand shall not be made before the expiration of, nor oftener than once in five days" mean shall not be made before the expiration of five days of service, during which, wages were earned, and not oftener than once in each five days thereafter.

The Jacob N. Haskell, 235 Fed. 914.

The London, 238 Fed. 645.

The rights of a seaman in this country are controlled by this act, and not by the flag of the vessel on which he is serving.

The Ixion, 237 Fed. 142.

As I am asked to review the conclusion I reached in the Imberhorne case, and after considering the matter, I still think the conclusion there reached was correct, and as this case may be taken up, and that one was not, I will here quote from my opinion in the Imber-

17 horne case the portions which set out my views as to the reasons advances made by a foreign ship in a foreign port to the sailors when there signed, cannot be allowed when the sailor here claims the half part of such wages as he may have earned when he reaches this port.

I there said:

"The Supreme Court in the case of Patterson vs. Bark Eudora, 190 U. S. 169, says: 'Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects

itself to the jurisdiction of this country. * * * It follows from these decisions that it is within the power of Congress to prescribe the penal provisions of Section 10, and no one within the jurisdiction of the United States can escape liability for a violation of these provisions on the plea that he is a foreign citizen or an officer of a foreign merchant vessel. It also follows that it is a duty of the courts of the United States to give full force and effect to such provisions. It is not pretended that this Government can control the action of foreign tribunals. In any case presented to them, they will be guided by their own views of the law and its scope and effect, but the courts of the United States are bound to accept this legislation and enforce it whenever its provisions are violated. * * * And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign, as well as, domestic vessels. Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions, the courts are not at liberty to dispense with.'

It is true here, the court was passing upon a shipment of seamen made within this country, but the language used certainly carries with it the idea that regardless of whether the shipment may have been made here or elsewhere, that when the vessel comes here,

18 it immediately becomes subject to our laws on this question.

This must be necessarily true, because the same court on page 173 says: 'When, as here the statute declares in plain words its intent in reference to a pre-payment of seamen's wages, and follows that declaration with a further statement that the rule thus announced shall apply to foreign vessels as well as to vessels of the United States, it would do violence to language to say that it was not applicable to a foreign vessel.' That court follows this statement by holding that this enactment is not invalid, because invasive of the liberty of contract guaranteed by our Constitution.

This brings us to the main question in the case.

In the case of *The State of Maine*, 22 Fed. 733, Judge Brown, in construing the Dingley Bill, holds that where advances were made to the seamen in a foreign jurisdiction in order to induce them to sign, such advance is not included under the prohibitory clause of the Act, and hence, such advance on wages should be deducted from the one-half of the wages earned by the seamen. His opinion is strongly and clearly written, and I agree in the main with what he there says in holding that the penalties declared by this Act cannot be imposed upon the master or the vessel for acts done in a foreign jurisdiction.

The Dingley Bill was amended by what is commonly called "The Seaman's Act," but the provisions of the Dingley Bill as to forbidding advances on seamen's wages do not seem to be changed by the amendment. The question in my mind is one that does not seem to have been considered by Judge Brown, and is, whether the provisions of Section 10 of the Dingley Bill as amended by the Seaman's Act,

19 does not lay down a rule which a judge in this country is bound to follow in passing upon how one-half of the wages of a seaman is to be calculated? In other words, that even

though the penalties declared by the Act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seaman's wages that have been earned, we are directed by the terms of the Act to exclude any advances which may have been made by the ship to the seaman, whether made in a foreign jurisdiction or not, and we must follow this rule in calculating the wages of the seaman when a libel is filed in the admiralty courts of this country.

Section 4530 says: 'Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs, one-half part of the wages which shall have then — earned at every port where such vessel, after the voyage is commenced shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void.'

Section 10 (a) of the Dingley Act as amended, provides: 'that it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen, when payment is deducted or to be deducted from a seaman's wages. * * * The payment of such advance wages or allotment shall in no case except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.' (Bold-faced type mine.)

20 Section 10 (e) as amended, reads: 'That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States.'

In considering the question of whether or not the advance on the wages which has been made in a foreign jurisdiction should be excluded, I am struck in the first place with the statement contained in Section 10 (a), 'The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.'

Now, in the first place, here is a direct instruction to the court to reject the advance on the trial of this question, and the language seems to me to necessarily exclude the advance, because it says: 'In no case' is the advance to be allowed.

We are necessarily bound to concede that the Act is to have some force, even though the shipping of the seaman and the advance on his wages was made in a foreign port, because the provision requiring the payment of one-half of the wages earned by the seaman is before the court for enforcement and this provision is to be enforced, notwithstanding the fact that the seaman was shipped in a foreign jurisdiction. If then, some part of this Act is applicable on this state of facts, then the question is how far the provisions of the Act shall be applied. What provisions of the Act are applicable and what provisions are inapplicable on this state of facts? If we should say that because the seamen were shipped in a foreign jurisdiction, none of

the provisions of the Act are applicable we would have an entirely different question because we would be controlled, not by the provisions of the Act, but by the General Maritime Law; but
21 the moment that we concede that the seaman, under the provisions of this Act, is entitled to the payment of one-half of the wages he may have earned, then it seems to me that we must also concede that the other provision of the Act which rejects the advance on the wages must also be in force no matter where such advances may have been made, and to my mind, the provisions of Section 10 (a) lays down the law which this court is bound to follow.

Again, it will be noticed that the advance to the seaman on his wages before the same have been earned is declared by the Act to be unlawful. Certainly, it cannot be contemplated that the courts of this country would enforce an agreement or transaction which Congress has declared to be unlawful here, even though such agreement or transaction was not unlawful where the same transpired. Such agreement or transaction would still be unlawful here.

2nd Chitty on Contracts, 972, 11 American Edition,

In my opinion, when a libel is filed in the United States by a seaman seeking to recover one-half of the wages earned by him, and it is shown that there has been paid to such seaman in a foreign port an advance on his wages, this court is bound by the provisions above quoted to reject the advance in ascertaining the one-half of the seaman's wages which now may be due him.

Tending to further support the construction which I have given to this Act, it occurs to me that the provisions of Section 16 of the Seaman's Act which provides, 'That in the judgment of Congress, articles in treaties and conventions of the United States, in so far as they provide * * *

with the provisions of this Act, ought to be terminated, and to
22 this end, the President be, and he is hereby requested and directed, within ninety days after the passage of this Act, to give notice to the several Governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods after notices have been given, as may be required in such treaties and conventions.' Certainly, unless Congress intended these provisions to be applicable in the United States, it would not require the President to take steps to abrogate any treaty provisions which were in conflict with the provisions of this Act."

Upon considering the evidence as to the amounts earned by each of the libellants and the amounts paid them, exclusive of the advances made at the time of shipment, I find that Magnus Persson and Andreas Evanger had, at the time of making their demand for one-half of their wages on February 22, 1917, been already paid more than the one-half of their wages earned up to that time, so that they were not entitled, at that time, to demand anything of the vessel.

As the demand in each of these cases was not justified, and as each of these seamen abandoned the vessel when further payment to them was refused, I find that they have deserted the vessel, and are not en-

titled to receive anything from the vessel, so that the libel is hereby dismissed as to Magnus Persson and Andreas Evanger.

As to Erik Sandberg, I find that this man, at the time he made his demand on February 22, 1917, had earned \$90.85; that he had been paid \$37.34; that there was coming to him \$8.09. I find that the captain of the vessel refused to pay him anything on account of his wages because the vessel had advanced him at the time of signing \$19.00.

23 I therefore find that the vessel wrongfully refused to pay him, and that under the terms of the Act, he is entitled to his discharge, and to all of the balance of the wages then earned by him, which amount to \$58.51, exclusive of the \$19.00 advanced to him.

As to Carl Jansson, I find that at the time he made his demand, for one-half of his wages on February 22, 1917, he had earned \$90.85; that there had been then paid to him by the vessel \$39.49; that there was then due him \$5.94 as a balance of the one-half of wages then due him. I further find, that when he made his demand on February 22, 1917, the captain of the vessel refused to pay him anything because the vessel had advanced to him, at the time he signed \$9.50.

I therefore find that the vessel wrongfully refused to pay him, and that under the terms of the Act, he is entitled to his discharge, and to all of the balance of the wages then earned by him, which amount to \$51.36, exclusive of the \$9.50 advanced to him.

As to S. K. Benjaminsen, I find that at the time he made his demand for one-half of his wages on February 22, 1917, he had earned \$90.10; that there had been then paid to him by the vessel \$26.19; that there was then due him \$18.86 as a balance of the one-half of wages then due him. I further find, that when he made his demand on February 22, 1917, the captain of the vessel refused to pay him anything because the vessel had advanced to him, at the time he signed \$28.50.

I therefore find that the vessel wrongfully refused to pay him, and that under the terms of the Act, he is entitled to his discharge, and to all of the balance of the wages then earned by him, which amount to \$63.91, exclusive of the \$28.50 advanced to him.

As to John Perannen, I find that at the time he made his demand, for one-half of his wages on February 22, 1917, he had earned \$201.40; that there had been then paid to him by the vessel \$78.23; that there was then due him as a balance of one-half of the wages due him \$21.47; I further find, that when he made his demand on February 22, 1917, the captain of the vessel refused to pay him anything because the vessel had advanced to him, at the time he signed \$52.25.

24 I therefore find that the vessel wrongfully refused to pay him, and that under the terms of the Act, he is entitled to his discharge, and to all of the balance of the wages then earned by him, which amount to \$123.17, exclusive of the \$52.25 advanced to him.

As to Erik Sandberg, Carl Jansson, S. K. Benjaminsen and John Peranen, they are hereby discharged from the S. S. Talua, and de-

crees will be entered in their behalf against said vessel for the amounts found due them.

ROBERT T. ERVIN, *Judge.*

May 26, 1917.

Filed May 26, 1917. Virgil C. Griffin, Clerk.

Final Decree.

District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

versus

BRITISH SHIP TALUS.

This cause coming on to be heard and being considered by the court,

It is ordered, adjudged and decreed that the libel as to Magnus Persson and Andreas Evanger be and the same is hereby dismissed.

It is further ordered, adjudged and decreed that Erik Sandberg do have and recover of said British Ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51); that Carl Jannson do have and recover from said British Ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36); that S. K. Benjaminsen do have and recover of the British Ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91); that John Perannen do have and recover of the said British Ship Talus the sum of One Hundred Twenty-three and 17-100 Dollars (\$123.17).

25 It is further ordered that unless the above named amounts are paid within ten (10) days from the date hereof together with the costs of this cause as taxed that execution shall issue against the stipulators on the claim bond and the stipulators on the cost bond respectively.

Made this 26th day of May, A. D. 1917.

ROBERT T. ERVIN, *Judge.*

Filed and entered May 26, 1917. Virgil C. Griffin, Clerk.

Agreed Statement of Facts.

District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

versus

BRITISH SHIP TALUS.

It is hereby agreed, by and between the parties to this cause by their respective proctors of record, with the approval of the Judge of said District Court, that the following is a full and true statement of the facts upon which this case was decided in the said District Court, and that this agreed statement of facts shall be incorporated in the record of this cause on appeal to the Circuit Court of Appeals for the Fifth Circuit, as all of the evidence in this cause, in lieu of all depositions herein taken.

District Court of the United States for the Southern District of Alabama.

ERIK SANDBERG et al.

vs.

BRITISH SHIP TALUS.

26 That at the time of all the matters herein set forth, the libellants were all citizens or subjects of nations other than these United States, and the ship Talus was a British ship duly registered as such.

That all of the libellants were employed by the ship as seamen at Liverpool, in the Kingdom of Great Britain and Ireland, and that at the time of such employment and before boarding the ship or performing any service for it, they were all made certain advances at Liverpool by the ship or its agents.

That the making of such advances in the ports of Great Britain and Ireland to the amount of one month's wages is not forbidden by the laws of that Kingdom and is usual and customary; and that the advances in this case did not, as to any libellant, exceed the amount of one month's wages.

That the libellants boarded the ship Talus at Dublin, Ireland, another port of said Kingdom, on December 1, 1916, and remained in its service until they left it at Mobile, Alabama, as hereinafter shown.

That the ship Talus sailed from Dublin to the Barbadoes and thence to Mobile, Alabama, arriving in American waters for the first time during this voyage on February 11, 1917, off Fort Morgan, Alabama.

That the ship Talus proceeded immediately from Fort Morgan to Mobile, where she unloaded and loaded cargoes, and where she remained until after February 24, 1917.

That during the voyage, and at Barbadoes, and at Mobile prior to February 22, 1917, the libellants had received certain payments from the ship Talus, in cash and in articles purchased from it, which are the prior and undisputed credits hereinafter referred to.

That on February 22, 1917, the libellants demanded of the master of the ship Talus the payment of the one-half of the wages earned by them to that date; that no point is or was made as to the demand being made on the legal holiday by the claimant-appellant.

That the master of said ship Talus then paid to the libellants a sum which, with prior and undisputed credits and also with the said advances at Liverpool, equalled or exceeded, as to each
27 libellant, the one-half of the wages then earned by such libellant from the commencement of his service for the ship, but which was less than such one-half wages if the advances at Liverpool are not included in this total of credits against the half wages of such libellant; that the said master claimed that the advances at Liverpool should be deducted from the one-half wages and refused to pay such one-half wages without deducting such advances and in paying the libellants, he did in fact deduct such advances.

That the last paragraph above applies to the four successful libellants only, the District Court having found that, as to the other two libellants, they had received from the ship one-half of their wages irrespective of and without deducting such advances.

That the sum or sums paid by the master at Mobile to the libellants, in the case of all libellants, exceeded the amount of wages earned by the libellants for the eleven days the ship had then been in American waters.

That on February 23, 1917, the libellants filed their libel against the ship Talus, and that not having performed any further service for the ship since their said demand, they did, on February 24, 1917, quit the said ship and remove their clothes and effects from it, and that they were duly logged as deserters on the same day.

That the amounts found by the District Court to be due and set forth in its decree of May 26, 1917, are in all cases correct, if said District Court was correct in holding that the said advances at Liverpool should not be deducted from the said one-half wages; if the said District Court erred in said holding, then that the proper decree would have been one dismissing the libel as to all libellants.

ALEX HOWARD,

Proctor for Libellants-Appellees.

JOSEPH N. MCALEER,

JAMES H. KIRKPATRICK,

Proctors for Claimant-Appellant.

Assignment of Errors.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty.

No. 1642.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSON and JOHN PERANEN

VS.

THE BRITISH SHIP TALUS. In Rem. John MacDonald, Claimant.

Comes John MacDonald, claimant of the British ship Talus, which claimant has concurrently herewith prayed and taken an appeal from the final decree rendered in the said cause against him and the sureties on his claim bond given for the release of the vessel, and against him and the sureties on his cost bond given in the above entitled cause, and the said John MacDonald, claimant of the said British ship Talus, says and shows that in the record and proceedings of the Court in said cause there is manifest error, and as grounds therefor this claimant assigns the following, separately and severally:

1. The District Court erred in adjudging the libellant, Erik Sandberg, entitled to recover of said British ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51).

2. The District Court erred in adjudging the libellant, Carl Jannson, entitled to recover of said British ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36).

3. The District Court erred in adjudging the libellant, S. K. Benjaminson, entitled to recover of said British ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91).

29 4. The District Court erred in adjudging the libellant, John Peranen, entitled to recover of said British Ship Talus the sum of One Hundred and Twenty-three and 17-100 Dollars (\$123.17).

5. The District Court erred in adjudging the libellant, Erik Sandberg, entitled to recover of said British ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51); the District Court erred in adjudging the libellant, Carl Jannson, entitled to recover of said British ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36); the District Court erred in adjudging the libellant, S. K. Benjaminson entitled to recover of the British ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91); the District Court erred in adjudging the libellant, John Peranen, entitled to recover of said British ship Talus the sum of One Hundred and Twenty-three and 17-100 Dollars (\$123.17).

6. That said District Court erred in taxing the costs of said cause against this claimant and the other stipulators on the claim bond.

7. Because said District Court erred in not deducting the advances made by the ship Talus at Liverpool, England, to the respective libellants, from the one-half of the wages earned by said libellants respectively at the date of their demand for such one-half wages.

8. Because said District Court erred in not dismissing the libel as to all of the libellants.

9. Because said District Court erred in entering the final decree by it entered in this case, on the proof in this case:

JOSEPH N. McALEER,

JAMES H. KIRKPATRICK,

Proctors for Claimant, John MacDonald.

Filed July 3, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn, Deputy Clerk.

30

Petition for Appeal.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG, CARL JANNSSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSON and JOHN PERANEN

VS.

The BRITISH SHIP TALUS. In Rem. John MacDonald, Claimant.

The said John MacDonald, claimant of the said British ship Talus, considering himself aggrieved by the order and decree made and entered in the above styled cause on the 26th day of May, 1917, wherein and whereby it was ordered, adjudged and decreed that the libel as to Magnus Persson and Andreas Evanger be dismissed, and that Erik Sandberg should have and recover of said British ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51); that Carl Jansson should have and recover of the said British ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36); that said S. K. Benjaminson should have and recover of said British ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91); and that said John Peranen should have and recover of said British ship Talus the sum of One Hundred Twenty-three and 17-100 Dollars (\$123.17); and also taxing the costs in this cause against this claimant and the other stipulators on the cost bond in this cause; does hereby appeal from said order and decree of May 26, 1917, as aforesaid, to the United States Circuit Court of Appeals for the Fifth Circuit. Said John MacDonald files herewith an assignment of errors in said cause, and bases his appeal on the reasons therein specified, and prays that this appeal may be allowed, and that a

transcript of the record, papers and proceedings in which said order and decree were made, duly authenticated, may be sent to
31 the said United States Circuit Court of Appeals for the Fifth Circuit.

JOSEPH N. MCALEER,
JAMES H. KIRKPATRICK,
*Proctors for John MacDonald,
Claimant of the British Ship Talus.*

Filed July 3, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn, Deputy Clerk.

Decree Allowing Appeal.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSON and JOHN PERANEN, Libellants,

versus

The BRITISH SHIP TALUS. In Rem. John McDonald, Claimant.

On motion of the proctors for the said John McDonald, claimant of the British ship Talus, for an order allowing an appeal, it appearing to the court that the said John McDonald has filed in this cause his assignment of errors and a petition praying an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the final decree rendered herein on the 26th day of May, 1917; it is ordered and decreed by the court that the appeal prayed be and the same hereby is allowed.

It is further ordered that the bond for costs and damages on appeal be and the same is hereby fixed at Two Hundred Fifty Dollars (\$250.00), and that; upon the execution and proper filing of the said bond, the said decree so appealed from, being the said decree of May 26, 1917, be and the same hereby is superseded to await the decision
32 of the United States Circuit Court of Appeals for the Fifth Circuit.

Made July 3, 1917.

ROBERT T. ERVIN, *Judge.*

Filed and entered July 3, 1917. Virgil C. Griffin, Clerk.

Appeal Bond.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSON and JOHN PERANEN, Libellants,

versus

THE BRITISH SHIP TALUS, in Rem. John McDonald, Claimant.

Be it known that we, John McDonald, as claimant of the British Ship Talus, as principal, and A. L. Staples and H. B. Pake, as sureties, are held and firmly bound unto Erik Sandberg, Carl Jannson, S. K. Benjaminson and John Perannen, as libellants, who were successful, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said obligees in the bond, all or any of them as the determination of the Appellate Court may require, or their or any of their executors, administrators, or assigns, and for the payment of which we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

In testimony whereof, we have hereunto set our hands and seals this 17th day of July, 1917.

The Condition of this Obligation is Such, that whereas lately on to-wit the 26th day of May, 1917, at a session of the District Court of the United States for the Southern District of Alabama, Southern Division, in a cause then pending in said court, and entitled as above in which cause the said Erik Sandberg, Carl Jannson, Magnus Persson, Andreas Evanger, S. K. Benjaminson and John Perannen were libellants, the British Ship Talus was used in rem, and the said John McDonald was the claimant of said ship; a decree was rendered against the said ship in favor of the said libellant, Erik Sandberg, for the sum of Fifty-three and 51-100 Dollars (\$53.51), in favor of the said Libellant, Carl Jannson, in the sum of Fifty-one and 36-100 Dollars (\$53.36), in favor of the said libellant, S. K. Benjaminson, in the sum of Sixty-three and 91-100 Dollars (\$63.91), and in favor of the said libellant, John Perannen, in the sum of One Tundred Twenty-three and 17-100 Dollars (\$123.17), and all costs of said proceeding, but dismissing the libel as to libellants, Magnus Persson and Andreas Evanger; and whereas the said John McDonald has obtained from the said court an order allowing an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the said decree in the said District Court

Now, therefore, if the said John McDonald shall prosecute his said appeal to effect and shall answer all costs and damages that may be awarded against him if he should fail to make said appeal good, then

the above obligation shall be void; otherwise it shall be and remain of full force and effect.

JOHN McDONALD. [SEAL.]

A. L. STAPLES. [SEAL.]

H. B. PAKE. [SEAL.]

Approved July 17, 1917.

ROBERT T. ERVIN, *Judge.*

Filed July 17, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn, Deputy Clerk.

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. Benjaminson and John Peranen, Greeting:

34 You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit within thirty (30) days from the date hereof pursuant to an appeal allowed by the District Court of the United States for the Southern District of Alabama, in Admiralty Cause No. 1642, Erik Sandberg et al. versus Ship Talus, John McDonald, Claimant, and wherein said John McDonald, as Claimant of said Ship Talus, is Appellant, and you, said Erik Sandberg et al., are Appellees, to show cause if any there be, why the judgment in said appeal mentioned should not be corrected and full and speedy justice done to the parties in that behalf.

Witness the Honorable Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama, this 17th day of July A. D. 1917.

ROBERT T. ERVIN,
U. S. District Judge, Southern District of Alabama.

Attest:

VIRGIL C. GRIFFIN,
*Clerk U. S. District Court,
Southern District of Alabama.*

Service of the above citation accepted this 17th day of July A. D. 1917, and a copy of same received.

ALEX T. HOWARD,
Proctor for Erik Sandberg et al., Appellees.

Filed July 17, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn, Deputy Clerk.

Certificate.

UNITED STATES OF AMERICA:

District Court of the United States for the Southern District of Alabama.

I, Virgil C. Griffin, Clerk of said Court, do hereby certify that the foregoing 34 pages, numbered 1 to 34, contain a true and correct transcript of the record and proceedings had in said court in Admiralty Case No. 1642, wherein Erik Sandberg et al. are libellants and Ship Talus, John McDonald, Claimant thereof, is defendant, as fully as the same remain of record and file in my office as such clerk.

In testimony whereof, I hereto set my hand and affix the seal of said Court at the City of Mobile, Alabama, this 21st day of July A. D. 1917.

[SEAL.]

VIRGIL C. GRIFFIN, *Clerk.*

36 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of January 16, 1918.

No. 3119.

JOHN McDONALD, Claimant of Ship "Talus,"

versus

ERIK SANDBERG et al.

On this day this cause was called, and, after argument by Palmer Pillans, Esq., for appellant, and Alex T. Howard, Esq., for appellees, was submitted to the Court.

37

Opinion of the Court.

Filed January 25th, 1918.

In the United States Circuit Court of Appeals, Fifth Circuit.

3119.

JOHN McDONALD, Claimant of the British Ship "Talus," Appellant,

v.

ERIK SANDBERG et als., Appellees.

Appeal from the District Court of the United States for the Southern District of Alabama.

Joseph N. McAleer, J. H. Kirkpatrick and Palmer Pillans (M. V. Hanaw, of counsel), for appellant.
Alex T. Howard, for appellees.

Before Walker and Batts, Circuit Judges, and Grubb, District Judge.

GRUBB, *District Judge*, delivered the opinion of the Court.

This is an appeal from a final decree in admiralty against the appellant, as claimant of the ship Talus, and in favor of certain seamen for the amount of wages alleged to be due them. The libel was originally filed on behalf of six seamen; the court below dismissed the libel as to two, and from its decree in this respect, no appeal was taken by them. In favor of the remaining four a decree was rendered for the respective amounts found due them, and from

38 this part of the decree, the appeal was taken by the claimant.

The facts were stipulated in the record, and the appeal presents for decision the proper construction of Section 11, in connection with Section 4, of the Act of Congress, approved March 4, 1915, 38 Statutes at Large, 1164-1185, entitled "An Act To promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea." The sections involved are those which prohibit the making of certain advances to seamen before the commencement of the voyage for which they ship, and which require that half their earned wages be paid, upon arrival of the ship in any port where it receives or delivers cargo, with certain limitations.

The Talus was a British ship, which sailed from the port of Liverpool to Mobile upon the voyage in question. The libellants were British subjects, and the advances, which are questioned, were made to them in Liverpool at the time they were shipped and were valid

under the laws of Great Britain. The District Judge disallowed the advances in reckoning the amount due libellants, and it is conceded that had the advances been taken into account, or if only wages earned by appellants while the ship was in the port of Mobile had been considered, there would have been nothing due libellants at the time of their demand, and that the libel should stand dismissed; and on the other hand, that if wages earned from the time of sailing from Liverpool are to be considered, and if the advances there made were properly ignored by the District Court, the decree as there rendered should be here affirmed.

Section 4 of the Act of March 4, 1915, commonly known as the "LaFollette Act," is found on page 1165 of Volume 38 of the Statutes at Large, and is as follows:

39 "Sec. 4. That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages, which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: Provided further, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.' "

Section 11 of the same is found on page 1168 of the same volume, and the material subdivisions of the section are the following:

"(a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the

vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense
 40 be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.00

* * *
 "(c) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

The appellants first contend that the decree was erroneous because they contend that Section 4 of the Act, in providing that the seaman is entitled "to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned, at every port where such vessel, after the voyage has been commenced shall load or deliver cargo, before the voyage is ended," only requires the master to pay one-half of the wages earned by the seaman from the time of the arrival of the ship in such a port until the demand. We think the plain purpose of Congress was to allow the seamen the benefit of half of his earned wages, less payments, upon each occasion upon which the statute permits him to demand them from the commencement of the voyage to the time of demand, and that the words of the statute "then earned" are not limited by the succeeding words "at every port" but that the function of the latter is to describe the place of legal demand only. Absence of punctuation between the words "then earned" and the words "at every port" is of little persuasiveness as against the evident intent of Congress. The probable brief duration of a ship's stay in intermediate ports and the small amount of probable wages there earned by the seamen, would make the required payments of little value to them.

41 The appellant's further contention is that the District Court erroneously refused to consider as a proper deduction from the earned wages of libellants certain advances made them by the master in Liverpool, when they were engaged. The statute says that a seaman is to be paid on demand "one-half part of the wages which he shall then have earned." That previous lawful payments should be first deducted, is conceded. Otherwise the law might require the master to pay to the seaman before the voyage was complete more than the amount stipulated to be paid for the whole voyage.

The word "earned" is used in the sense of owing. Congress avoided the use of the word "due," as there might by the terms of the contract between the ship and the seaman be no wages due till the end of the voyage. The use of the word "earned" was to describe wages, for which the seaman has done the work, whether then due or not, and not to fix the amount of what was owing and half of which was to be paid, regardless of previous lawful payments. The question remains whether advances made the libellants by the master in Liverpool are legal payments. Had they been made in an American port, though by a foreign ship and to foreign seamen, the language of Section 11 of the Act would have invalidated such advances as payments. *Patterson v. Bark Eudora*, 190 U. S., 169. The question is whether the language of the Section prohibits the making of advances in foreign ports by foreign ships to foreign sailors. The case cited is limited in its effect and language to advances made within the territorial jurisdiction of the United States. It is competent for Congress to prescribe conditions of entry to and clearance from its own ports by foreign vessels since it may exclude them altogether. The section under construction, however, does more than that. Section (e) provides that this section "shall apply, as well to
42 foreign vessels, while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

If this section of the Act applies to advances made by a master, owner, or agent of a foreign ship in a foreign port, its effects would be to render such master, owner, or agent guilty of a misdemeanor and subject him to prosecution and punishment, if found in this country, for an act done without the jurisdiction of this country, and which was a lawful act where done. The competency of Congress to so enact is of such grave doubt that a court would not construe the language of an Act to that effect, unless forced so to do. The language of Section 11 does not require such an unreasonable construction. Indeed the words of subdivision (e) of the Section, "shall apply as well to foreign vessels, while in waters of the United States, as to vessels of the United States," would seem to imply the contrary. We think the reasonable construction of the Section is that it covers only such advances as it was within the competency of Congress to criminally punish the making of, viz: advances made within the territorial waters and jurisdiction of this country by whomever made and to whomever paid. This gives the Section a legitimate field of operation. It was the purpose of Congress to protect American seamen, as far as it had jurisdiction to act. In doing so, in order to avoid discrimination against American ships, it was necessary to include foreign ships and sailors under like circumstances. There was, however, no policy to be subserved in the interest of foreign sailors, so far as the title to the Act shows, and the debate upon it in Congress. In protecting American sailors on American ships in foreign ports, the same question of discrimination against American ships would be encountered. Congress might have treated it, by imposing

as a condition upon the entry to and clearance from American ports of both foreign and domestic vessels, that all advances, which
43 were made to seamen in a foreign port before the voyage began, should be agreed by the ship to be disregarded in settlements required by the law to be made with seamen in the ports of this country. Instead of doing so, it went further and provided that every advance, prohibited by the Act, including those made by the agents, owners or masters of foreign ships, should be punishable as a misdemeanor. Its determination to make the criminal penalty cover all advances prohibited by the Section indicates that its intention was to limit the scope of the prohibited advances to its undoubted competency in that respect, i. e., to such as were made within its undoubted jurisdiction to punish crimes. It also prevents a construction that would separate the penalty provision from any class of the prohibited advances, and so sustain the law in other respects as to the class of advances to which the penalties are legally inapplicable; since the penalty provision is as wide as the prohibition itself and covers every advance, whether made by a domestic or foreign ship which is prohibited by the terms of the Act. Probably Congress felt that the sanction of criminal penalties would be more effective than the prescribing of mere civil conditions, and for that reason confined its legislation to advances made under conditions which gave it jurisdiction to punish the making of them criminally. The provisions of the Section, when so construed, are broad enough to fully protect American sailors in American ports, and possibly in foreign ports, and it was not essential to the end in view to include advances to foreign sailors on foreign ships in foreign ports. The debates in the Senate show no wider purpose to have been in the purview of the legislators. The abrogation of existing treaties was necessary, though the scope of the Act was confined to advances made in American ports, both for the purpose of transferring wage disputes on foreign vessels to the courts of the United States from the consular courts of the treaty nations, as provided for in
44 Section 4 of the Act, and to enable the provisions of the law with regard to arrests for desertion to be executed without conflicting with existing treaties. Provisions in the Act to that end do not support appellees' contention.

It is further contended that, though the statute is not itself applicable to advances made in foreign ports to foreign seamen by foreign ships, it outlines a policy against the making of such advances anywhere, and that pursuing that policy, the courts of the United States will not recognize such advances. The case of *Arden Lumber Company v. Henderson Iron Works*, 83 Ark. 240, is cited by appellees in support of this contention. The policy of the United States respecting advances to seamen is only exhibited by the Section of the Act in question and the corresponding sections of its predecessors, and, in all these acts, as we construe them, this policy was confined to advances made to American seamen and to foreign seamen, only while in American ports. No policy against the making of advances to foreign seamen in foreign ports by foreign ships, where the law of the country permits it, can be deduced from them; nor do the

debates in Congress upon the La Follette bill show a wider purpose than the protection of American seamen against advances, the inclusion of foreign ships and seamen being incidental only and to avoid discrimination against American ships. The usual rule is that where a contract involves no moral turpitude, but is *malum prohibitum* only, if it is valid where made, it will be held valid in the courts of the United States elsewhere than where it was made, when rights are predicated upon it, though it would be invalid if made there. *Ward v. Vosburgh*, 31 Fed. 12; *Lehman v. Feld*, 37 Fed. 832; *Wilhite v. Houston*, 200 Fed. 390; *Berry v. Chase*, 146 Fed. 625.

Our conclusion is that the District Court erred in its construction of the Act and in disallowing the advances. The decisions
45 of the District Courts are in conflict. The Case of the State of Maine, 22 Fed. 734, supports the views we have expressed. The cases of *The Rhine*, 244 Fed. 833, and of *The Delagoa*, 244 Fed. 835, and possibly the case of *The Ixion*, 237 Fed. 142, adopt the view taken by the District Judge in this case.

It follows that the decree of the District Court must be reversed and the cause remanded with directions to that court to enter a decree dismissing the libel as to all the libellants and taxing appellees with the costs of the appeal, and it is so

Ordered.

Judgment.

Extract from the Minutes of January 25th, 1918.

No. 3119.

JOHN McDONALD, Claimant of Ship "Talus,"

versus

ERIK SANDBERG et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby reversed; and that this cause be, and it is hereby remanded to the said District Court with directions to enter a decree dismissing the libel as to all the libellants and taxing appellees with the costs of the appeal;

It is further ordered, adjudged and decreed that the appellees, Erik Sandberg, Carl Jansson, S. K. Benjaminson, and John Per-
46 annen, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 36 to 46 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3119, wherein John McDonald, Claimant of Ship Talus, is appellant, and Erik Sandberg et al. are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 35 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 28th day of February, A. D. 1918.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
*Clerk of the United States Circuit
Court of Appeals.*

47 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3119.

JOHN McDONALD, Claimant of the British Ship "Talus," Appellant,

VERSUS

ERIK SANDBERG et als., Appellees.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 10th day of April, A. D. 1918, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

United States Circuit Court of Appeals, Fifth Circuit.

No. 3119.

JOHN McDONALD, Claimant of the British Ship "Talus,"

versus

ERIK SANDBERG et al.

It is hereby stipulated and agreed by and between counsel for the parties to the above cause that the transcript of the record in said cause filed in the Supreme Court with the application for certiorari may be taken as a return to the writ of certiorari and that no new transcript shall be made.

Witness our hands this 9th day of April, 1918.

(Signed)

W. J. WAGUESPACK,

(Signed)

ALEX T. HOWARD,

Proctors for Petitioners, Appellees.

(Signed)

PALMER PILLANS,

For the "Talus."

48 I further certify that the above is a true and correct copy of said Stipulation, and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 10th day of April, A. D. 1918.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,

Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

49 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which John McDonald, Claimant of the British Ship "Talus," is appellant, and Erik Sandberg et al. are appellees, No. 3119, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of Alabama, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command

50 you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

51 [Endorsed:] File No. 26402. Supreme Court of the United States, October Term, 1917. No. 935. Erik Sandberg et al. vs. John McDonald, Claimant, etc. Writ of Certiorari. # 3119. Filed 10th day of April, 1918. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

52 [Endorsed:] 935/26402. United States Circuit Court of Appeals for the Fifth Circuit. No. 3119. John McDonald, Claimant of the British Ship "Talas," Appellant, vs. Erik Sandberg et als., Appellees. Writ of Certiorari, and Return thereto.

53 [Endorsed:] File No. 26402. Supreme Court U. S., October term, 1917. Term No. 935. Erik Sandberg et al., Petitioners, vs. John McDonald, Claimant, etc. Writ of certiorari and return. Filed April 13, 1918.

35

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No. 935

ERIK SANDBERG, ET ALS,

(Libellants) Petitioners

VS.

JOHN McDONALD, CLAIMANT OF

THE BRITISH SHIP "TALUS"

(Defendant) Respondent

Come the Petitioners, Erik Sandberg and others, and move this Honorable Court to advance this cause upon the docket and set the same down for hearing on October 14th, 1918, or upon a day as near thereto as the court may deem meet, upon the following grounds:

The court on April 1st, 1918, granted a petition for a writ of certiorari herein, directed to the United States Circuit Court of Appeals for the Fifth Circuit. The case presents for decision the construction of Section 11, in connection with

Section 4, of the Act of Congress, Approved March 4th, 1915, commonly referred to as the "Seamen's Act" and found in 38 Statutes at Large 1164-1185. This court has seen fit to advance for argument on the above date of October 14th, 1918, the case of Dillon vs. Strathearn Steamship Company, Ltd., Claimant of the Steamship "Strathearn," which case also presents for decision the construction of one of the same sections, viz., Section of the "Seamen's Act." There is also certified to this Honorable Court in said cause the question of the constitutionality of said Section 4 of the "Seamen's Act" and as both cases present in part the same question it would conserve the time and labor of the court to pass upon them together.

ALEX. T. HOWARD,
Proctor for the Petitioners.

NOTICE OF MOTION.

Messrs Joseph N. McAleer, James H. Kirkpatrick, Palmer Pillans and M. V. Hanaw, Proctors for Respondent :

Please take notice that the foregoing motion will be submitted to the Supreme Court of the United States at Washington, D. C., on Monday, the 15th day of April, 1918, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated April 8th, 1918.

ALEX. T. HOWARD,
Proctor for the Petitioners.

I hereby accept service of a copy of the foregoing motion this 8th day of April, 1918, and concur therein.

PALMER PILLANS.
Of Counsel for the Respondent.

7.

Office Supreme Court, U. S.
FILED

NOV 4 1918

JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1918.

No. 392

ERIK SANDBERG, ET ALS. (LIBELLANTS),
Petitioners,

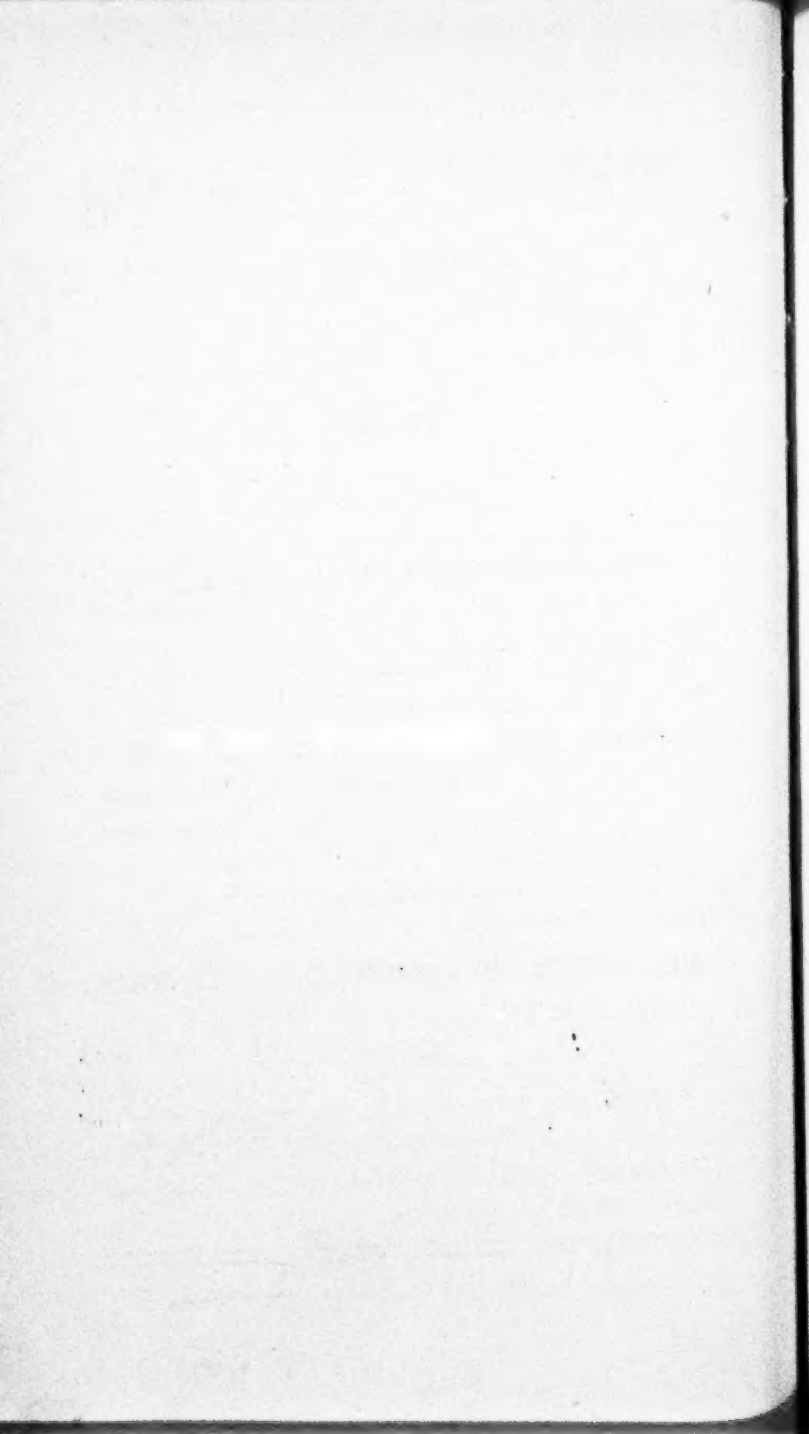
versus

JOHN McDONALD, CAIMANT OF THE BRITISH
SHIP "TALUS,"
Respondent.

REPLY TO BRIEF OF COUNSEL FOR DEFENDANT.

W. J. WAGUESPACK,
Of Counsel.

E. P. Andree Ptg. Co., 516 Natchez St., New Orleans, La.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1918.

No. 392

ERIK SANDBERG, ET ALS. (LIBELLANTS),
Petitioners,

versus

JOHN McDONALD, CAIMANT OF THE BRITISH
SHIP "TALUS,"

Respondent.

REPLY TO BRIEF OF COUNSEL FOR DEFENDANT.

With due deference to the learned counsel for defendant, the issues of this case have been confused, we think, by the lengthy discussion in his brief of questions which were not in controversy, so that it becomes necessary to state the precise questions in controversy, which are:

1st. Is Congress vested with power to impose upon foreign vessels when they enter into the ports of the United States to load and deliver cargo and while in the waters of the United States, not only the duty of paying one-half of the wages of seamen on demand as a condition of entry, but to impose the further condition that, all advancements made to seamen on foreign soil, before any wages have been earned, shall not be deducted in the computation of the amount payable on demand and shall not be a defense to a libel for the recovery of said wages?

2nd. If Congress has such power did it exercise it legally by the enactment of Section 11 of the Seamen's Act?

3rd. If by construction of Section 11 Congress did not specifically include foreign advancements, did it not establish a public policy against making advancements everywhere which our Courts must enforce to safeguard the interest of our own citizens?

4th. If Congress did not so exercise such powers, as applied to foreign advancements, is not the deduction, or recovery of such advancements, as a remedial right, instead of a substantive right, regulated and determinable by the laws of the forum, whenever a libel in the Courts of the United States is filed by a seaman for his wages?

FIRST POINT.

There can be no controversy as to this proposition, for all the authorities, including the Court *a qua*, agree that Congress has such powers.

The Eudora, 190 U. S., 169.

Wildenhus's Case, 120 U. S., 1-11.

The Exchange, 7 Cranch., 116.

Oceanic Steamship Nav. Co. v. Stranahan, 214 U. S., 320.

Buttfield v. Stranahan, 192 U. S., 470.

Turner v. Williams, 194 U. S., 279.

Weber v. Freed, 239 U. S., 325, 329.

The Talus, Fed. Rep., 248, p. 670.

SECOND POINT.

The learned counsel contends that Congress has no extraterritorial powers to impose a penalty for the act of making advances upon foreign soil, and that, therefore, that portion of Section 11 which makes it

"unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same",

was beyond the power of Congress.

But, Section 11 imposes as a condition of entrance,

"that the payment of such advance wages shall 'in no case' absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and 'shall be no defense to a libel suit or action for the recovery of such wages.'"

Counsel cannot seriously contend that these provisions, whenever the foreign vessels come into our ports to load and deliver cargo and while in the waters of the

United States, as conditions of entrance, are not within the legislative authority, notwithstanding that the advances were made in a foreign country and were lawful there for the reason that no one can have a vested right of contract or property to enter into American ports to trade in disregard of the conditions attached to such entry.

The Eudora, 190 U. S., 169.

Oceanic Steamship Nav. Co. v. Stranahan, 214 U. S., 320.

But, the learned counsel says, the words "while in the waters of the United States" which were not in the Act of 1898 are "mere idle verbiage if they were not intended to confine the condemnation of advances to advances made within the territorial jurisdiction of the United States." The answer is found in the legislative history of Section 11, which demonstrates that Congress intended that the act should cover advances made abroad. Brief of Attorney General, pp. 42, 43, 44. The words "while in the waters of the United States" should, moreover, be read in the light of the provisions of Section 4 with which Section 11 is correlated and of which it is the complement, for it is manifest that without the enforcement of the provisions against advances made in foreign ports, the provisions of Section 4 as applied to foreign seamen shipped in foreign ports could easily be nullified as is demonstrated by the facts of this very case.

But, says the learned Counsel:

"It should be noted that it is not the payment of advance wages, without more, that it is declared

shall in no case absolve the vessel, but the payment of **such advance wages** that shall in no case absolve. What does **such** refer to? Unlawful advancements, of course, and no advancements are such unlawful advancements unless they are made within the territorial jurisdiction of the United States."

But it should be noted also that there are in Section 11 two clauses reading **such advance wages**, one in subdivision "a" and this in subdivision "e", and that both manifestly relate to and qualify the same character of advances. And what advances? Manifestly advances made **before** the wages have been **actually earned** as distinguished from advances made **after** the wages have been actually earned but **before** they are **actually due**, for, in every shipping contract it is stipulated that no wages shall be due before the termination of the contract, which is, as a rule, for a period of three years. This is the only interpretation of the word "**such**" which harmonizes with the legislative history of the act, and the latter negatives the learned counsel's interpretation.

And finally adopting the argument of the Circuit Court, the learned counsel contends that, as Congress cannot make it unlawful to do an act in another sovereignty, it has, by making advancements of wages unlawful, indicated its intention to limit the scope of the prohibited advances to the territorial jurisdiction of the United States.

We think we have answered this point fully and satisfactorily on page 10 of our original brief, for it will be seen that the criminal penalty provision of the statute and the civil provision are not indivisible, but on the contrary are

divisible and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated, for the civil provision is independent and is complete in itself and can be enforced in this case. See authorities on page 10 of libellant's original brief. Moreover, the cases of *Knott v. Botany Mills*, 179 U. S., 69; and *United States v. Twenty-five Packages of Hats*, 231 U. S., 358, are "precise precedents" in support of the contention that the criminal provision affords no sufficient reason for refusing to give full effect to the civil provisions.

Every objection interposed by the learned counsel, therefore, we think, has been answered, but our contention goes further, although that may not be necessary, for, conceding that Congress cannot prohibit the act itself of paying advanced wages upon foreign soil, Congress can, under the ruling in *Freeman v. United States*, 239 U. S., 117, prohibit by criminal penalty as a continuous act, the entry of vessels into our ports to load and deliver cargo with seamen of lower standard, affected and tainted with the continuous condition of involuntary servitude and economical bondage arising from the payment of advanced wages in foreign countries which enter with them into our ports when they come into competition with American seamen, because that tends to defeat the object which Congress had in view in enacting this statute, as is so clearly demonstrated in this very case; *United States v. Chavez*, 228 U. S., 525. See original brief, pages 7, 8, 9. Also *Oceanic Steamship Nav. Co. v. Stranahan*, 214 U. S., 320.

United States v. Nord Deutscher Lloyd, 223 U. S., 512.

But, says the learned counsel for defendant:

"Libellants had earned, when the ship came into the waters of the United States, more than the amount of the advances, and, therefore, the relation of debtor to creditor had ceased to exist."

Nothing could better illustrate the wisdom of the provision, for notwithstanding that libellants had earned sufficient wages to extinguish the relation of debtor and creditor, they were still debtors for the advances and it was the deduction of the advances which kept them in financial bondage and defeated the purpose which Congress had in view by depriving them of the privilege extended to them by Section 4.

It is patent that the provision against advances was intended to stand as a barrier simultaneously against the crimping system and against any violation of Section 4.

THIRD POINT.

No further discussion of this point is necessary for the legislative history of the act demonstrates that the construction adopted by the Court of Appeals would not only operate injuriously against the interest of our own citizens but defeat the purpose of the act, and the point has been discussed fully in all the briefs of counsel.

FOURTH POINT.

It is obvious that the advance of wages in Liverpool before the wages were earned was not a payment for the reason that payment implies a debt and there can be no pay-

ment of that which is not due. *Tennessee Bond Cases*, 114 U. S., 663. *Bouvier's Dictionary*. This advancement was, therefore, in the nature of a loan with the implied obligation on the part of the seaman to return the amount when a settlement should be made. The relation of debtor and creditor was thereby created between the master and the seamen, which was a debt or a substantive right; but the master's right to claim a reduction or set-off or compensation of this debt whenever a settlement was to be made, is not a substantive right but a remedial right, for it is a right to the remedy of compensation or set-off or counterclaim and it is entirely distinct from the substantive right arising from the relation of debtor and creditor which is the debt. But the Seamen's Act provides that the payment of advance wages shall be no defense to a libel, suit, or action for the recovery of such wages. In other words, the statute denies to the master the remedy of compensation, set-off or counterclaim; but remedies or remedial rights are regulated and determinable by the law of the forum and not by the law of the contract.

Pritchard v. Norton, 106 U. S., 133.

Story on Conflict of Laws, 574.

Scudder v. Union Nat. Bank, 91 U. S., 406.

Ogden v. Saunders, 12 Wheaton, 213.

Marson v. Haile, 12 Wheaton, 370.

It is well established that a set-off or compensation of distinct causes of action between parties in the suit is regulated by the law of the forum.

Story on Conflict of Laws, Sec. 574.

Gibbs v. Howard, 2 N. H., 296.

Ruggles v. Keyler, 3 Johns N. Y., 263.

Hence, even under the restricted construction placed by the Court of Appeals, its judgment would be erroneous, for it is the law of the forum and not the law of the contract which must determine whether the advances should be credited.

WERE LIBELLANTS DESERTERS?

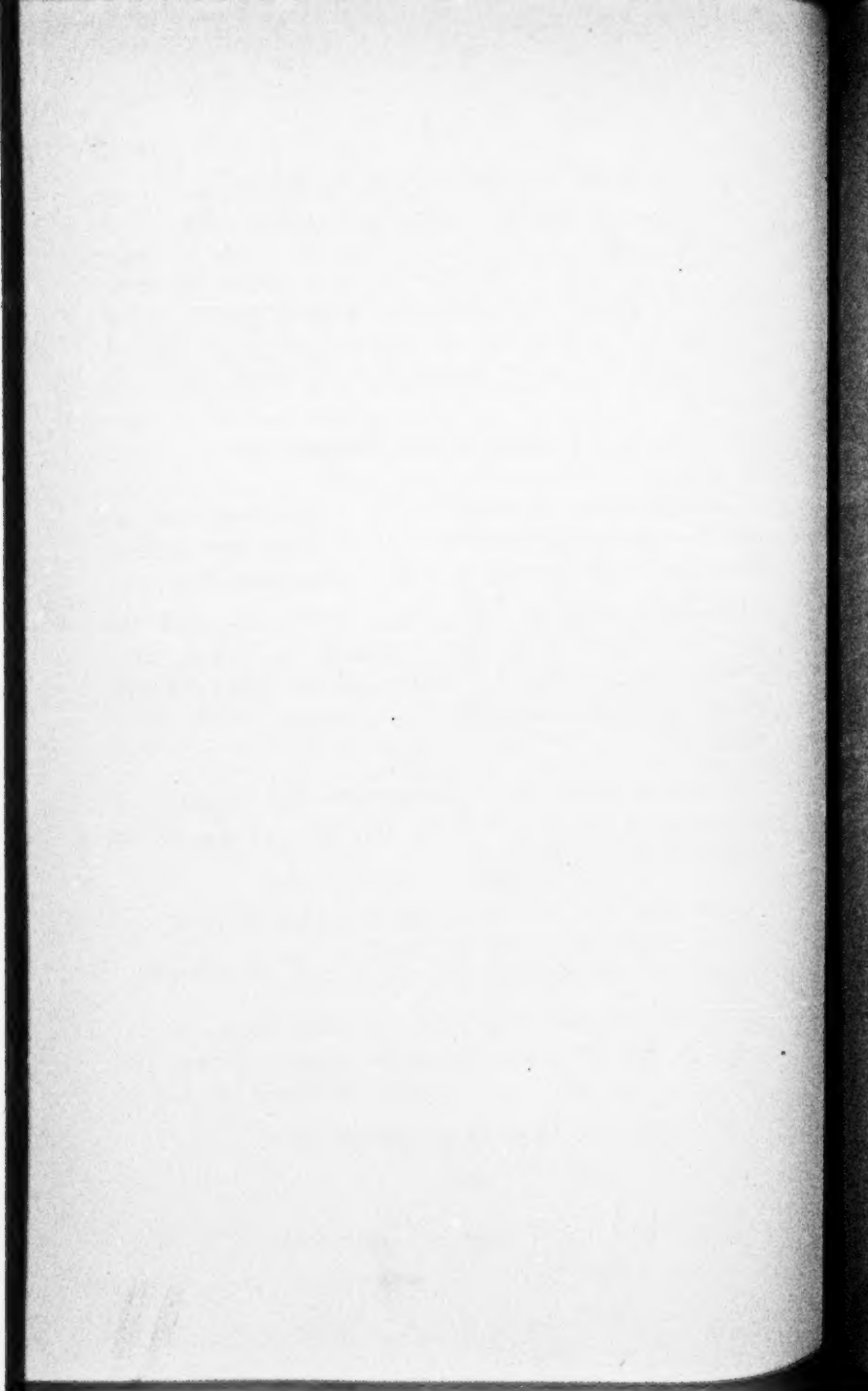
The admission of facts by libellants' proctor was not intended to divest libellants and could not divest them of their legal rights, for, they are the wards of the admiralty.

The authorities cited by counsel are not apposite. A precise precedent is *Baddell v. Gardner Fed. Cases*, 692, where the Court held that when a seaman leaves the ship for the purpose of obtaining legal satisfaction he is not a deserter.

It is respectfully submitted, therefore, that the decree of the Court of Appeals should be reversed and that of the District Court should be affirmed.

W. J. WAGUESPACK,

Of Counsel.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 892

ERIK SANDBERG, ET AL.,
(Libellants) Petitioners.

VERSUS

JOHN McDONALD, CLAIMANT OF THE BRITISH
SHIP "TALUS"
(Defendant) Respondent.

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Fifth Circuit.

Brief on Behalf of Libellants.

W. J. WAGNERPACK,

Sept. 14, 1918.

Of Counsel,

1406 Whitney Central Bldg.,

New Orleans, La.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 935

ERIK SANDBERG, ET ALS.,
(Libellants) Petitioners,

versus

JOHN McDONALD, CLAIMANT OF THE BRITISH
SHIP "TALUS."

(Defendant) Respondent.

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Fifth Circuit.

Brief on Behalf of Libellants.

STATEMENT OF CASE.

Libellants, who are not American citizens, were shipped as seamen aboard the British ship "Talus" at Liverpool, England, and began their service on December 1, 1916. The "Talus" sailed on December 1, 1916, and arrived in the port of Mobile on February 11, 1917, where she remained until February 24, 1917.

On February 22, 1917, the libellants demanded of the master one-half of the wages which they had then earned. This demand was refused by the master upon the ground that he had the right to deduct certain sums advanced to libellants in Liverpool when they signed the shipping articles, and that, after making said deductions, libellants had received each more than one-half of the wages which they had then earned, although without said deductions there was a balance due to each which amounted to more than one-half of their wages then earned.

Claimant set up this defense:

I.

That the statute provides for payment of one-half of the wages earned after the vessel has entered into the waters of the United States, and not half of the wages earned from the commencement of the voyage.

II.

That the master was entitled to deduct the advance made in Liverpool before the commencement of the voyage in computing what was due.

The District Court decided both points against claimant, entering a decree in favor of libellants for the full amount of wages earned, less certain advances made after the commencement of the voyage.

The Court of Appeals affirmed the District Court on the first point upon the same grounds which the District Court had stated, and in this language:

"We think the plain purpose of Congress was to allow the seaman the benefit of half of his earned wages, less payments, upon each occasion upon which the statute permits him to demand them from the commencement of the voyage to the time of demand, and that the words of the statute, 'then earned,' are not limited by the succeeding words 'at every port,' but that the function of the latter is to describe the place of legal demand only. Absence of punctuation between the words 'then earned' and the words 'at every port' is of little persuasiveness as against the evident intent of Congress. The probable brief duration of a ship's stay in intermediate ports and the small amount of probable wages there earned by the seamen would make the required payments of little value to them."

But the Court of Appeals reversed the District Court upon the second point and allowed the deductions of the advances made in Liverpool, upon the ground that Section 11 of the Seamen's Act, prohibiting such advances under penalty, is only applicable to American seamen and foreign seamen in American ports, and does not apply to advances made to a foreign seaman in a foreign port on a foreign vessel, where the law permits it, because Congress has made the criminal penalty cover all advances prohibited by the section, and had thus indicated its intention to limit the scope of the prohibited advances to such as were made within its jurisdiction to punish crimes, and on the further ground that no policy against the making of advances to foreign seamen in foreign ports on foreign vessels where the law of the country permits it can be deduced from the statute, and that the advances, being *malum prohibitum*, and not *malum in se*,

if valid where made, are valid in the Courts of the United States.

STATEMENT OF ERRORS.

We think the Court erred in the following particulars:

(a) In holding that the statute cannot be construed to apply to advances made by foreign ships to foreign seamen who shipped in a foreign port whenever the ship has entered into the ports of the United States to load and unload cargo, and while in the harbors of the United States, because the imposition of a penalty for making such advances upon foreign soil, which is beyond the legislative power, shows the intent of Congress to exclude such advances, whereas under the rule of construction laid down by this Court in *United States vs. Freeman*, 229 U. S., 117, the imposition of such penalty is within legislative authority.

(b) In that assuming that the penalty clause of the statute is unconstitutional still, the civil provision of the statute can be given effect by separating it from the penalty provision as applicable to advances made by foreign vessels to foreign seamen in foreign ports, because these provisions are not indivisible, but are separable from one another, and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated.

(c) In that assuming that it is necessary, in order to save the statute, to adopt the restricted interpretation placed upon it by the Court of Ap-

peals and that no special policy can be deduced against advances made to seamen in a foreign port still a general policy can be deduced from Section 4530 of the Act against such advances everywhere in that they are calculated to affect injuriously the general interest and policy of the country.

(d) In that, assuming that libellants were not entitled to one-half wages earned, the Court erred in concluding that they were deserters, and in dismissing their demand as deserters.

ARGUMENT.

POINT ONE.

The penalty provision of the statute under the rule of construction in *United States v. Freeman*, 229 U. S., 117, is within the scope of legislative authority.

The intent that Section 11 should apply to foreign vessels when they enter into the ports of the United States to load and unload cargo, and while they remain in the waters of the United States, is manifest, for the statute provides that any master or owner of a foreign vessel who has violated this provision shall be liable for the penalty. Section 11 of the Act of March 4, 1915, page 1168, Vol. 38, Stat. L., reads as follows:

"(a) That it shall be, and is hereby, made unlawful in any case to pay any seaman any wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person,

for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the Court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.00. * * *

"(e) That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any

such vessel unless the provisions of this section have been complied with."

The statute does not say: That any master or owner of a vessel who **shall** violate this provision **shall** be liable for the penalty, but who **has** violated this provision; that is to say, any master or owner of a vessel who, having paid any seaman wages in advance, shall enter into the ports of the United States to load and unload cargo.

It is obvious that Section 11 forms part of the general plan which Congress has mapped out to elevate and better the condition of American seamen, to secure a higher standard of service, and to benefit the American merchant marine by equalizing the costs of operation between our ships and those of other nations, for, as said by this Court in *The Eudora*, "no one can doubt that the best interest of seamen as a class are preserved by such legislation."

The immediate purpose which Congress had in view in adopting this criminal provision was evidently to prohibit the entry into the ports of the United States of vessels with seamen who were victims of **crimps**, as they are called, and who, having been paid advance wages, stood in a state of continuous involuntary servitude, to the end that discrimination against American seamen, whose standard Congress desired to elevate, and American shipowners, who are bound by the provisions of the law against the payment of advance wages, might be avoided. What Congress wished to do was to raise the standard of service in the American merchant marine, and to that end subject the foreign master and the foreign seamen, as soon as foreign vessels came within the jurisdiction of the United States, to the same laws to which

the American masters and the American seamen were subjected. It is, therefore, evident that the purpose of the clause as to foreign vessels was not to prohibit the act itself of paying advanced wages upon foreign soil, because that was beyond the scope of legislative authority, but to prohibit the entry of vessels into our ports to load and deliver cargo with seamen of a lower standard, affected, tainted, with the continuous condition of involuntary servitude which was established by these payments, and which entered with them into our ports when they came into competition with American seamen.

That was the evil to be remedied; but this Court has said that:

"A guide to the meaning of a statute is found in the evil which it is designed to remedy, as gathered from contemporaneous events."

Trinity Church vs. United States, 143 U. S. 457.

The construction placed upon the statute by the Court of Appeals which eliminates the criminal penalty, which Congress determined was a necessary sanction, would manifestly defeat its enactment, and would open the doors to the evil which it was designed to remedy, for it would exclude entirely the advances made in a foreign country, while the construction which includes the criminal penalty would accomplish the purpose of its enactment; and such a construction is clearly within legislative powers under the rule adopted by this Court in the case of *United States vs. Freeman*, 229 U. S. 117.

In that case, which was an indictment under Section 240 of the Criminal Code, making it a punishable offense knowingly

"to ship or cause to be shipped from one State
 * * * or from any foreign country into any
 State * * * any package of or containing intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee," etc.,

although the word "ship" was used in the statute, the Court read "shipped" as a continuous act whereby the transportation into a State is accomplished, and said:

"So, if its words permit, as we think they do, the statute must be given a construction which will cause it to reach both classes of shipments and thereby to accomplish the purpose of its enactment. (*United States vs. Chavez*, 228 U. S. 525, 33 S. C. Rep. 599.) This, we think, requires that it be construed as referring to the continuing act before indicated, whereby the transportation into a State is accomplished, whether the package comes from another State or from a foreign country. In this view the completion of the offense will always be within a jurisdiction where the statute can be enforced."

Applying that rule of construction to this case, we think that the clause of the statute which imposes a criminal penalty upon the master of the vessel who has violated its provision by entering the waters of the United States while the relation of debtor and creditor established by the payment of advance wages on foreign soil continues to exist, is within the scope of legislative authority.

SECOND POINT.

The penalty provision of the statute and the civil provision are not indivisible but are separable and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated.

If our contention is not well founded, if the penalty provision is unconstitutional, we think the section can still be saved, because the criminal provision can be omitted and the civil provision enforced, since the civil provision is complete in itself and can be separated from the penalty provision, for the two provisions are not indivisible; and it is obvious from the object which Congress had in view that its intention would not thereby be violated, because manifestly Congress would have enacted the civil provision without the penalty provision, not only because the penalty provision was merely incidental, but because the civil provision was necessary to carry out the general purpose which Congress had in view.

McCullough vs. Commonwealth of Virginia, 172 U. S. 102; *Railroad Co. vs. Schutte*, 103 U. S. 118; *James vs. Bowman*, 190 U. S. 127; *Chesapeake & O. R. Co. vs. Commonwealth of Kentucky*, 179 U. S. 388; *New York vs. Mien*, 11 Pet. 102.

The words of subdivision "e" of Section 11:

"That this section shall apply as well to foreign vessels while in the waters of the United States as to vessels of the United States."

are evidently intended to apply only and solely to the civil provision of subdivision "a" of Section 11, and not to the criminal provision of that subdivision, because, if the intent and purpose had been to make them apply to both the criminal and the civil provisions of the statute, it would not have been necessary to have added:

"And any master, owner, consignee, or agent of any foreign vessel who has violated this provision shall be lable for the same penalty that the master, owner or agent of any vessel of the United States would be for similar violation."

All of this language would be superfluous if the penalty provision had been included in the language:

"That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States."

We think, therefore, that the two provisions are not indivisible, and that this penalty provision can be separated from the civil provision of Sub-section "a" which latter provision is independent and is complete in itself, and that it can be enforced in this case.

It is manifest that if either our contention in point one or our contention in point two is correct, the advances made in Liverpool should have been disallowed under the doctrine enunciated in *Patterson vs. The Eudora*, 190 U. S., 69, and in *The Kensington*, 188 U. S., 263.

POINT THREE.

Assuming that no special policy against the making of advances against foreign seamen in a foreign port can be

deduced from Section 11, still a public policy against making said advances everywhere can be deduced from the fact that it would operate injuriously against the general interest and policy of our own citizens.

If we assume for the sake of argument that it is necessary to adopt the restricted construction placed upon Section 11 by the Court of Appeals, in order to save the statute from constitutional death, then no special policy could be deduced from that section, against the making of advances to foreign seamen in a foreign port, because that would only be *malum prohibitum*. But, a public policy against making said advances everywhere can be deduced from the fact that either it involves moral turpitude or operates injuriously against the general interest and policy of our own citizens. There can be no controversy as to that proposition.

Bank v. Owen, 2 Peters, 527-538; *Wodward v. Roane*, 23 Ark., 523; *Marshall v. Sherman*, 148 N. Y., 9; *Hill v. Spear*, 50 N. H., 253.

The making of such advances may not involve moral turpitude but the discrimination against American seamen and American shipowners which would result by enforcing the law against them and not against foreign shipowners would affect injuriously the interest of American seamen and of the American merchant marine of the United States, for the policy of the United States is to promote the welfare of American seamen by elevating and bettering their condition, by causing wages to equalize upwards by means of the free operation of the law of supply and demand as to labor, to secure a higher standard of service, and thus promote

safety at sea, and to benefit the American merchant marine by equalizing the costs of operation as between our ships and those of other nations; that being the general policy of Congress, it is manifest that if the law against making advances to seamen in American ports were enforced against American shipowners and foreign shipowners and not against foreign shipowners when the advances were made in foreign ports, it would operate injuriously against the interest of the American merchant marine and against the interest of our own American seamen; nor does it make any difference if there is no statute expressly prohibiting such advances and if the making of such advances involves no moral turpitude for the test is whether there is a rule of public policy as was said in *The Kensington*, 188 U. S., 263, where this Court used the following language:

"Nor is the suggestion that because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore, they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States."

POINT FOUR.

If we are wrong on every proposition still the Court erred in concluding that libellants were deserters, and in decreeing their wages forfeited.

Under the conviction that their contract had lawfully terminated, libellants left the ship in good faith for the purpose of asserting their rights in a United States Court. They could not, therefore, be deserters in the sense in which that word is ordinarily used. If they made a mistake still they were justifiable in believing that they could lawfully terminate their contract since the District Court was of the same opinion.

Seamen are the wards of admiralty entitled to special protection, and in view of the fact that this is a new law involving difficult propositions, we think that even if the Court should come to the conclusion that our contentions are not well founded that the balance of libellants' wages, after deducting the advances, should not be forfeited.

CONCLUSION.

It is respectfully submitted that, under the rules of construction in *United States vs. Freeman*, the imposition of a penalty for the making of advances upon foreign soil which is a continuous act when the vessel comes into our port to load or unload cargo is not beyond the legislative power, that the civil and the penalty provisions of Section 11 are divisible and that it is obvious that Congress would have enacted the civil provision with the penalty provision eliminated; that there is a rule of public policy of the United States against making such advances everywhere in that it is calculated to affect injuriously the general interest and policy of the country; that the advances, therefore, in this case

should not have been allowed; but that if we are wrong on every proposition, still libellants were not deserters in the ordinary sense of that term, and, therefore, the balance of their wages should not be decreed forfeited.

Respectfully submitted,

W. J. WAGUESPACK,

Of Counsel,

1406 Whitney-Central Bldg.,

New Orleans, La.,

Sept. 14, 1918.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No.

ERIK SANDBERG, ET ALS., (Libellants), Petitioners

vs.

**JOHN McDONALD, Claimant of the British Ship "Talus,"
(Defendant), Respondent.**

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

**To the Honorable the Chief Justice and the Associate Justices
of the Supreme Court of the United States:**

The petition of Erik Sandberg, Carl Jannson, S. K. Benjaminsen and John Peranen, all citizens of various states and kingdoms foreign to the United States of America, by their proctor respectfully show to this Honorable Court:

That during the months of November and December, 1916, they were employed as seamen by agents of the British full-rigged ship, the "Talus", at the port of Liverpool, England, and that at the time of such employment and before boarding the ship or performing any service for it, they were all made certain advances by the ship. The ship sailed to the Barbadoes

and thence to Mobile, Alabama, where she arrived Feb. 13, 1916, and loaded a cargo of timber.

Petitioners received not only such advances but during the voyage, at Barbados and on arrival at Mobile, certain moneys on account and certain supplies out of the slop-chest. That on Feb. 22, 1916, which was a little more than a week after the ship's arrival at Mobile, all of the petitioners made a demand on the master of the "Talus" that he pay them the one-half of their wages allowed them by the "Seamen's" Act. The master replied that he would pay them half of their wages, but that in arriving at the sum he would deduct the aforesaid advance and refused to pay petitioners half of their wages without so deducting or crediting the advances made to them at Liverpool.

Petitioners demanded that the master pay them half of their wages without deducting such advances and upon his refusal to do so they filed in the District Court of the United States for the Southern District of Alabama on Feb. 23, 1917, their libel asking that under the "Seamen's" Act they be allowed to recover the full payment of their wages and be held to have been released from their contract by the master's failure to comply with said demand. (Record, pp. 4, 5, 6, 7).

On April 5, 1917, the Claimant filed an answer in which it was admitted that petitioners had been employed as seamen, as hereinabove set forth and that they had performed service as such and had made demand upon the master for half their wages, but that the "Talus" was a British ship, that petitioners were foreigners, had been employed at Liverpool and that all of the services performed by them up to the time of the arrival of the ship inside the Mobile Bar had been performed outside the territorial waters of the United States of America, that the contract had been made and the advances paid at Liverpool, that such advances were lawful and customary under the laws of the Kingdom of Great Britain and Ireland and denied that the master had refused to pay the petitioners the half of their wages as allowed by the American statute, but averred that such deduction of the advance was right and proper and that after crediting the advances made to the seamen, they were entitled to no further payments at the time of their demand, but had

received the amount to which they were entitled under the proper construction of the "Seamen's" Act. (Record, pp. 8, 9, 10, 11).

There was no dispute as to the facts in the case, insofar as the claim of petitioners was concerned, and the cause was submitted on briefs as to the proper construction of the law. The District Court rendered a very full and carefully considered opinion in which it was held that the "Seamen's" Act, especially sections 4 and 11 thereof, when properly construed, did not permit the master of a foreign vessel to make such deduction of the advances paid to the seaman in a foreign port when the seaman demanded a half payment of his wages under the provisions of the "Seamen's" Act upon the arrival of the vessel in an American port, but that the seaman was entitled to receive the full half of wages earned on the voyage without regard to such advance. (Record, pp. 12-24).

The "Seamen's" Act, approved March 4, 1915, is found in 38 Statutes at Large pp. 1164-1185, and the two sections involved in this cause are fully set out in the opinion of the learned district judge (Record, pp. 13,14).

A final decree was entered May 26, 1917, in and by which petitioners were allowed to recover their wages in full and were discharged from the ship. (Record, pp. 24, 25).

By its decree the District Court thus gave full force and effect to the following provisions of section 11 of said Act: "That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages..... The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of the wages after the same shall have been actually earned, and shall be no defence to a libel suit or action for the recovery of such wages". It did so for the reason, that the same section provides: "That this section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States". Section 4 of the act provides that the seamen on foreign vessels, while in American harbors, shall have the same right to

the payment of half the wages earned by them as seamen on American vessels, and the learned district judge held that these sections taken together laid down a rule which the Congress had directed the courts to follow.

An appeal was taken from this decree to the court of appeals for the fifth circuit and on such appeal the facts were stipulated in the record. (Record, pp. 25, 26, 27). The case was argued orally on January 16, 1918, before Walker and Batts, Circuit Judges, and Grubbs, District Judge, and on Jan. 25, 1918, the court handed down its opinion, whereby the decree of the district court was reversed, and the cause remanded, with directions to that court to enter a decree dismissing the libel and taxing the appellees with the cost of the appeal.

There was only one question to be decided in the case and that was whether the advance was a proper credit against the half wages to which the seamen were entitled, and the learned Circuit Court of Appeals, in its opinion, held that the amount of this advance, if it had been made beyond the territorial jurisdiction of the United States was a proper credit, just like any other payment on account. In arriving at this conclusion the learned court said that it was influenced so to decide because the Congress had provided in section 11 for the punishment of the master of a foreign vessel who violated the provisions of the act prohibiting the payment of advances. The court of appeals said there was grave doubt if the Congress had such a power, and that it was the duty of the court not to so construe the act unless forced to do so. The learned court in its very able and clear opinion then proceeded to fix the same limitation upon the civil provisions of the act, quoted above, and held that in saying that the payment of the advance should be no defense to a libel and should in no case absolve the vessel, Congress only intended this provision of the act to apply to advances made within the territorial jurisdiction of this country.

Petitioners feel aggrieved and believe that the decree of the United States Circuit Court of Appeals for the Fifth Circuit is erroneous, because they believe that such construction of the act will defeat the purpose of the "Seamen's" Act not only as it was intended to furnish a remedy to them, but will

similarly defeat the claims for half wages allowed by the act of all foreign seamen for the reason that the United States is the only maritime nation that has adopted the policy of prohibiting the advance and the payment of the advance is a generally established custom. Because such construction of the act will thus adversely affect the interests of thousands of seamen in the foreign merchant marine and will inevitably affect American merchant seamen as well, and by impairing the right of personal liberty extended by the act will tend to defeat another great purpose of the act, which was to enable the American merchant marine to compete with foreign vessels as far as the wage scale is concerned, and because further, there is inherent in this case a great principle of law, vital to the interests of the United States, namely, the limitations to the power of the Congress in dealing with the general relations of this country with other nations, and because further, there is a conflict in the decisions of the district courts, and the Circuit Court of Appeals of the Second Circuit has decided a very similar case by a divided court, petitioners believe that this court should require said case to be certified to it for its review and determination, in conformity with the provisions of the Acts of Congress in such cases made and provided.

WHEREFORE, Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled John McDonald, Claimant of the British Ship "Talus," vs. Erik Sandberg et als, No. 3119, to the end that the said case may be reviewed by this court and that such proceedings may be had therein as to this honorable court may seem just.

ERIK SANDBERG
CARL JANNSON
S. K. BENJAMINSEN
JOHN PERANEN

ALEX. T. HOWARD,
Proctor for Petitioners.

STATE OF ALABAMA,)
COUNTY OF MOBILE.)

Alex. T. Howard, being duly sworn, deposes and says that he is the Proctor for the petitioners named in the foregoing petition, has prepared the same and knows the contents thereof; and that the allegations thereof are true, as he verily believes.

ALEX. T. HOWARD

Subscribed and sworn to before me this 8th day of March 1918.

STELLA BLACK,

(Seal)

Notary Public, Mobile County, Ala.

I hereby certify that I have examined the foregoing petition, and in my opinion, the petition is well founded, and that the case is one in which the prayer of the petitioners should be granted by this court.

ALEX. T. HOWARD,

Proctor for Petitioners.

MOTION FOR CERTIORARI.
SUPREME COURT OF THE UNITED STATES. ^

In the matter of the petition of Erik Sandberg, et als, for a writ of Certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit, to bring before the Supreme Court the case entitled in that court.

John McDonald, Claimant of the British Ship "Talus,"
Appellant

vs.

Erik Sandberg, et als., Appellees

And now come the Petitioners, by Alex. T. Howard, their Proctor, and move this court, upon a certified copy of the Transcript of the record herein, and upon the annexed petition, sworn to the 8th day of March, 1918, for a writ of certiorari, directed to the United States Circuit Court of Appeals for the Fifth Circuit, to bring before this honorable court the

case of John McDonald, claimant of the British Ship "Talus," Appellant, against Erik Sandberg et als, Appellees, for such proceedings therein as to this court may seem just.

ALEX. T. HOWARD,
Proctor for the Petitioners.

NOTICE OF MOTION.

SUPREME COURT OF THE UNITED STATES.

Erik Sandberg et als, Petitioners

vs.

John McDonald, Claimant of the British Ship "Talus,"
Respondent.

Messrs. Joseph N. McAleer, James H. Kirkpatrick, Palmer Pillans and M. V. Hanaw, Proctors for Respondent.

Please take notice that, on the petition of Erik Sandberg, Carl Jansson, S. K. Benjaminsen and John Peranen, verified March 8th, 1918, and a copy of the entire record in the case, the foregoing motion and petition will be submitted to the Supreme Court of the United States at Washington, D. C., on the 25th day of March, 1918, at the opening of the court on that day, or as soon thereafter as counsel can be heard; and that in support of said motion and petition, a brief of which the annexed is a copy, will be submitted to the court.

Dated March 8th, 1918.

ALEX. T. HOWARD,
Proctor for Petitioners.

I hereby accept service of a copy of the foregoing motion and petition, together with a copy of the brief annexed thereto, this 8th day of March, 1918.

PALMER PILLANS,
Of Counsel for the Respondent.

**SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1917.**

**ERIK SANDBERG, et als, (Libellants)
Petitioners.**

Against

**JOHN McDONALD, Claimant of the
British Ship "Talus," (Defendant)
Respondent.**

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

The facts and the general basis of this application are stated in the foregoing petition, and this brief will be confined to the argument of the points of law involved.

POINT 1.

The Petition seeks to obtain a construction by this court of Section 11, in connection with Section 4 of the Act of Congress approved March 4th, 1915 (38 Statutes at Large, 1164-1185), entitled "AN ACT TO PROMOTE THE WELFARE OF AMERICAN SEAMEN IN THE MERCHANT MARINE OF THE UNITED STATES; TO ABOLISH ARREST AND IMPRISONMENT AS A PENALTY FOR DESERTION AND TO SECURE THE ABROGATION OF TREATY PROVISIONS IN RELATION THERETO; AND TO PROMOTE SAFETY AT SEA." Section 4 provides for the payment to the seamen of one-half of the wages earned at every port where the vessel shall load or discharge cargo and Section 10 prohibits the payment of wages in advance and declares that the payment of advances shall in no case absolve the vessel or be a defense to a libel for the payment of the same and makes such payment a misdemeanor, provides that the section shall apply to seamen on foreign vessels while in harbors of the United States and subjects the masters of foreign vessels to the same penalties as our own. There is only one question presented by the record which is to be determined by a construction of the act, and that

is, whether, when the seaman demands one-half of his wages in an American port, the master can deduct advances made to the seaman in a foreign jurisdiction before he performed any services to the vessel. In other words, did the Congress intend what it said about such advances, namely, "The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages," or whether on the other hand, the court should read into or construe into the act the limitation that such advance should be excluded only when it had been made within the territorial jurisdiction of the United States.

Unless there be some good reason for thus adding to the act or to put it differently, reading this limitation into the act, then, the act speaks clearly for itself, needs no interpretation or construction, and the master cannot deduct such advance in arriving at the half wages for the simple reason that the act itself, as plainly as words can make it, specifically says that the payment of the advance shall in no case absolve the vessel and shall be no defense to a libel for the recovery of the full wages. In seeking to discover whether such limitation ought to be so read into the law, one would naturally endeavor to ascertain whether any rule of natural justice would require or lead to such conclusion and would turn first to the language used and see whether if we gave to the language its primary meaning and considered it in connection with the well understood principles of international law, the power to pass such legislation was within the power of the Congress.

If it had no such power, then, there might be suggested the propriety of fixing the limitation to advances paid within the jurisdiction, in order that one might escape ascribing to the Congress the usurpation of a power which it didn't have, or what is equivalent thereto, the doing of a vain and foolish thing.

The law would seem so clearly and completely settled on this point as to call for but little discussion. It was settled by

this court in the early days of the republic. We find the principles applied to-day not only in those provisions of the Seamen's Act regulating the affairs of foreign merchant ships and seamen, but in the Tariff Act, the Immigration Act, the Chinese Exclusion Act, the Naturalization laws and in many other ways. The authorities on International Law and the decisions of this court announce clearly the doctrine of the absolute supremacy of every nation to fix for itself the conditions under which it will carry on commerce with other nations, or admit the peoples of other nations within its borders; that if it will it may exclude other peoples and the merchant ships of other nations altogether and therefore must inevitably be held to have the right and the power to fix the terms and conditions upon which such ships can come into our ports and that when the foreign merchant ship comes here she submits herself to the regulation and jurisdiction of our laws. It is clear from the opinion of the learned Circuit Court of Appeals in this case, that the court entertained no doubt of this proposition.

Patterson v. Bark "Eudora," 190 U. S. 169.

Wildenhus's Case, 120 U. S. 1.

Vattel's Laws of Nations, Fifth Am. Ed. (Chitty)
page 39; also at page 145.

That the Congress therefore was dealing with a subject over which it had absolute control admits of no doubt and it is earnestly urged that, far from finding within the principles of International Law any reason for such limitation, we find there every reason for giving to the terms of the Act the full and complete meaning which its clear and emphatic terms so unmistakably convey, and it is suggested here that if the court find that the Congress had the power and that the language of the Act is clear that it will not concern itself with the question of policy, which, of course, is for the Congress alone.

SECOND POINT.

If then, there exists no reason for such limitation, and if the language of the law is so clear and explicit that the court should not feel called upon to construe it, under the well un-

derstood principle of construction that the court will not attempt to interpret that which needs no interpretation, let us next see if there existed anything in the conditions at the time of the passage of the act, or in its purposes which might tend to suggest that the Congress intended that such limitation be given to the terms of the act as has been declared by the learned Circuit Court of Appeals in this case. Precisely the contrary is true!

This "Seamen's" Act is no ordinary act of the Congress! It is not only an extensive legislation, but was strenuously fought and debated in the Congress. For twenty years it had been pending and during these twenty years not only had the American seaman and the American merchant marine gradually disappeared from the ocean but the public had been shocked by many great disasters of the sea, such as the "Titanic." The law has overturned the policy of ages with reference to the sea and has attempted to make the seaman a free man. It was earnestly urged upon the Congress that the reason the American boy would not follow the sea was because of the low wages created by competition with the poorly paid laborers of Europe, but principally the orient, and for the further and greater reason that, unlike other men who must toil, he must give up his liberty and be subjected to arrest and imprisonment for desertion. It had come to be more and more realized that the seaman not only followed a hard and dangerous life, but was in many cases taken advantage of. The high value of his service to navigation and commerce, together with the courts' knowledge of his habits and of the advantages that were taken of him by the unscrupulous caused him to become known as the ward of the courts of admiralty, but this did not suffice. The pages of the Federal Reporter and the decisions of this honorable court are full of stories of how, under the cloak of the advance, had hidden the assassins of his character and his wages. Societies sprang up in the name of humanity to protect him. Years pass and at last through the long night there flashes for the seaman the light of the "Seamen's" Act!

The appeal to pass it came not only from American seamen, but British seamen as well. It not only prohibited the

advance, but it abolished arrest and imprisonment and directed the President to notify those foreign governments with whom we had treaties conflicting with the act, that such treaties were to be abrogated. Its broad remedial measures were extended to foreign seamen as well as our own and the foreign merchant vessel was brought within its terms. It was called to the attention of the Congress that America could have no sea-power without seamen and the "Seamen's" Act was so framed as to meet foreign competition. Of what use to attempt to bring back to the ocean a merchant marine already disappeared if the American seaman could not be protected in his wages? How could the American Merchant vessel pay such high wages as prevailed in this country of high wages, and successfully compete with the low wages prevailing in Europe and especially the Orient? It was perfectly apparent to the Congress that right here was the very beginning of things if it was intended to build up our ocean traffic. Of what use were it to give to the foreign seamen freedom from arrest for desertion, if when he deserted he must forfeit the entire wages of a long ocean voyage? There was only one answer. The law must be so framed that the foreign seamen should, not only be free morally and as well as our own seamen protected from arrest for desertion, and the general social conditions of the seamen thereby improved, but he must be made free economically as well. That is to say that the law must be so framed that when the vessel arrived in an American port the foreign seamen getting a low wage could quit his ship and obtain employment in an American port where the American rate of higher wages prevailed. The inevitable tendency of such encouragement to him, brought about by thus allowing him payment of half of his wages, was to equalize the wage scale as far as this country is concerned and allow our merchant vessels to compete with the other nations of the world. Thus only could the two fundamental purposes of the act be realized, which were to promote the welfare of seamen and to build up our merchant marine.

It is, therefore, earnestly submitted that it not only appears from the language of the act that it was intended to be enforced in the way the learned district judge enforced it, but

that such was the clear purpose, the broad remedy intended by the act. Now, can such purpose be realized if the opinion of the Honorable Circuit Court of Appeals states the proper construction? Could not the foreign vessel easily defeat the provisions and purposes of the act in this very important respect by simply arranging the advance as to the amount so that when the vessel arrived in an American port it would be sufficient under the decision in this case to offset the demand for half the wages then earned? It is after all on the part of our foreign competitors, not so much a "tempest in a tea-pot," insofar as the payment of the half wages is concerned, (which after all, while a great blessing to the seaman is a trifle to them), but concern over the question of preserving the low wages at which they are able to obtain seamen abroad and would I be putting it too strongly to say that the real effort is to try to nullify the provision about the abrogation of the arrest for desertion and with the ulterior hope that to the extent that they are able to evade this provision of the "Seamen's" Act they will be able to maintain the low European scale of wages against their American competitors? It is unthinkable that such being the purpose of the act as shown by the conditions at the time of its passage and by the debate in the Congress that the courts should so construe the plain language of this act as to enable the foreign owners to evade it in this way. In thus endeavoring to urge upon the court the economic purposes of the act in order to show that the whole act should be construed together and its plain and clear terms upheld in all of their provisions to the end that the welfare of the American seaman may be promoted and our Merchant Marine be built up and American sea-power thus made possible in all of its noble possibilities, it is not our desire to overlook what after all, seems to me, to be the loftiest object of the law—and that is that the seaman as a human being, the foreign seaman as well as our own, shall receive the full measure of the personal liberty which, it was the purpose of the Congress, he should receive and that he might thereby attain unto that character and standing, which is today the opportunity of all other classes of labor and it is submitted also that it is only in this way, and by the consequent lifting of the dignity of the occupation of the

seaman that the free people of this great land can be induced to follow the sea—and also that there might be accomplished through better seamen that other great and expressed intent of the act, the promotion of safety at sea. The grand objects of the act will not be realized unless Section 4 of the act is upheld by the courts, in connection with Section 11, and the seaman thus enabled to receive the one-half of his wages intended to be allowed him, otherwise the greatest benefit of the entire act—the securing of freedom from arrest for desertion will, in practical effect, be obtained only at a great and hard sacrifice by the seaman, viz., **the forfeiture of all of his wages.** The idea of the Congress, must unquestionably have been, not only to rid the life of the seaman of the bane of the advance with all of its attendant evils, which this court has denounced and which The Legal Aid Society (of which a former member of this honorable court is the President) and many other benevolent associations have for so long attempted to abolish, but to give him the right to leave the vessel at an American port without having to surrender but half of his wages. If the construction put upon the act by the Circuit Court of Appeals shall prevail in this honorable court, then, it is submitted, that as it is the general practice among foreign owners to pay the seamen wages in advance anyhow, they will have at hand an easy method not only of defeating the provisions of the American statute requiring them to pay the seaman half of his wages but by conspiring with crimps, shipping masters, boarding house keepers, shop-keepers and other creditors of the seaman, who get most of the seaman's money anyhow under the advance system, will be able in large measure to defeat the provision about freedom from arrest for desertion by using as a club his helplessness and his natural desire not to lose the reward of his toil. This provision of the act doing away with the arrest is after all the "thorn in the flesh" of the foreign ship-owner. This is manifested by the heavy sentences which they are even now inflicting upon their seamen who desert, once they get them back within their jurisdiction. Their resentment at the extension by this great country of its beneficent system of laws to them is also exhibited by the recent attempt to get the Congress to repeal this provision of the act,

but, to their shame, it is most deplorably shown by their action sometimes in this country, now that they are deprived of the assistance of the federal government, of appealing to the unscrupulous officers of municipal and state governments to harass the seaman by prosecutions on charges real and imaginary in the state courts, when he has left the ship, the main idea always being, of course, to show him the error of his way in seeking to obtain for himself the great relief extended to him by an act of the Congress and leaving the vessel. The seaman is naturally not adept at taking care of himself, especially where he is unacquainted with the people, the language or the laws of the port, another circumstance which has caused him to be considered as the ward of this honorable court. And there is certainly nothing morally wrong, or unjust to any other nation, for the American Congress to strike down the evils of the advance, to provide for the payment to the seaman of half of his wages while in our ports, or to make all seamen free men insofar as it lies within its legal powers to do so throughout the world. Of course its action cannot stretch beyond the regulation of such foreign commerce as it is related to this country, but no good reason appears why it should not go thus far.

The debate upon the "Seamen's" Bill in the Senate shows that there was strong opposition to those provisions and sections of the act which sought to control or regulate foreign shipping, some senators going so far as to declare the right to do so beyond the powers of Congress, but the learned Senator from Mississippi (Mr. Williams) in an able address clearly demonstrated by reading portions of the opinion of this honorable court in *Wildenhus's Case*, 120 U. S. 1-19, that precisely the reverse was true and the right to pass the act was clearly within the powers of Congress. It is also interesting to note that it was called to the attention of the Senate during the debate and proceedings that the British Government exercised the right to regulate the life-boat equipment not only of her own vessels but foreign as well, not only those sailing from British ports but sailing from foreign ports to the British Isles.

I take it that under this point, it is not necessary to cite any authorities to the effect that in construing an act the

court will look to the conditions existing at the time and to the evident purposes had in mind by the Congress, but in support of the facts stated under this point reference is made to the very able pamphlet recently issued by Mr. Andrew Furuseth, entitled "American Sea-Power and the Seamen's Act," to Mahan's "Sea-Power in History;" and especially, in order to show that insofar as it is permitted to operate it is effectuating the purpose of Congress in equalizing the wage cost in the foreign and domestic vessels, reference is made to the Forty-First Annual Report of the Legal Aid Society, from which the following quotation is taken:

"The effect of the Seamen's Bill as enforced, particularly as to the provisions relating to advance notes or advance wages, and the right of the seamen to collect half their wages in American ports, as applicable to American and foreign vessels, is by far the greatest and most important of anything that has transpired in the shipping world for a long time. The Legal Aid Society took action in favor of abolishing the advance note or of making a law abolishing the payment of wages in advance of the time earned; this action was taken when the bill was pending before the committee on Merchant Marine and Fisheries in Congress. Our activities were in line with the provision of the Seamen's Bill, abolishing involuntary servitude and removing the remedies given to foreign governments and foreign ship-owners, to arrest seamen who desert in ports of the United States. Seamen being given a right on American and foreign vessels alike, to demand one-half wages, or half the wages earned by them and unpaid, in American ports, have been able to enforce that right by the provision of the law which enables them to bring suit for the full amount of wages owing them, in case the Master refuses to pay them half. I am inclined to think the theory and actual operation of the

Seamen's Bill is bound in time to prove its soundness and efficiency * * * One need not be a mathematician or a student of economy to conclude that the enforcement of this legislation means the creation of an opportunity to build up a Merchant Marine by reason of the fact that higher wages are paid on board all vessels and rules for safety appliances, better food, larger crews' quarters, and general conditions on board, are enforced on American vessels. An interest in shipping is stimulated which has certainly never before existed. Government records show that some 1,162 American vessels have been built and launched in the United States during the past year."

THIRD POINT.

Since then, the principles of international law do not require the fastening of any such limitation to the act, and since the mischief to be remedied by the legislation would call for a construction precisely to the contrary, the petitioners earnestly ask why the act has been so limited in its application by the learned court from which it is hereby sought to bring the case for review. This brings us to the only other possible reason for fixing such limitation, as far as the record reveals and that is the reason given by the learned Circuit Court of Appeals which delivered the opinion below.

The reason is that the section contains a provision making the payment of such advance wages punishable as a misdemeanor and the learned court well says that there is grave doubt that the Congress could lawfully subject the master of a foreign vessel to a penalty for an act lawfully done without the territorial jurisdiction of this country, that the Congress therefore should be deemed by the courts to have entertained no such intent. Thus far the argument is so ingenious, so plausible and so sound that our minds immediately give free assent. But it is earnestly asked why the learned judge in interpreting the act hits upon an unexpressed intent of the

Congress, and one which arises only out of a regard for an established principle of international law and then imposes such a limitation upon another disconnected and independent section of the act, which deals only with the law from the civil standpoint as distinguished from the criminal, in connection with which there can arise no such suggestion that it was beyond the powers of the Congress. It is respectfully submitted that in so constructing the act, the learned court has not only defeated its purposes, but has made an interpretation of it which is supported by no recognized legal rule of interpretation of statutes. The authorities are precisely to the contrary. It is not a proper rule of interpretation to limit the natural meaning of the act by imposing upon a section thereof a limitation which inheres in another section.

"It is a general rule without exception, in constructing statutes, that effect must be given to all their provisions, if such a construction is consistent with the general purpose of the act, and the provisions are not necessarily conflicting; and all acts of the legislature should be construed, if practicable, that one section will not defeat or destroy another, but explain and support it."

Mr. Justice Field in *Bernier v. Bernier*
147 U. S. 246.

"We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant:' this rule has been repeated innumerable times."

Mr. Justice Strong in *Washington Market Co. v. Hoffman*, 101 U. S. 115.

It is respectfully urged that by its decree in this cause the Circuit Court of Appeals has failed to give to the following provision of the act that full force and effect which its clear and emphatic language, which the purpose of the act and the rule of interpretation above set forth by this honorable court require, to-wit:

"The payment of such advance wages or allotment shall in no case except as hereinafter provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages."

A reasonable construction of this language surely does not require the fixing of such a limitation upon it and there is no necessary relation or connection between this, which might be termed the civil provision of the act and the criminal provision so ably discussed by the learned court. On the contrary it will be noted that several paragraphs of the act intervene between the paragraph which contains the above provision and the following provision:

"That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

It will be noted that in the first paragraph of the section there is included not only the provision above quoted, to the effect that the payment of such advance shall be no defense to a libel, but in the same paragraph the payment of advance wages is prohibited and the payment thereof made a misde-

meanor. Now, why this repetition of the provision making the foreign master liable to the same penalties, as the American master, if the theory of the Court of Appeals is correct and the Congress had for the time being overlooked or forgotten the legal distinction between its powers to punish a crime and to make effective civil provisions of the statute? It would seem if such were the case, that after making the payment of advances a misdemeanor, the Congress might well have rested after it had inserted the following words, "That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States." The additional provision to the effect that the master of the foreign vessel is punishable for a violation of the provisions of the act would tend to support the opposite theory, that is to say, would show that the Congress did have in mind the distinction between its power to punish as a crime and its power to regulate. One thing is certain and that is that while the debate was pending in the Senate the decisions of this court in the *Wildenhus's case* and in *Patterson vs. Bark Eudora* were argued and commented upon and from them it was shown to the legislative body that the Congress did have the power to regulate such foreign affairs on the civil side of the court.

It is also very persuasive that in the very title of the act it appears that the Congress was dealing with the rights of foreign seamen, and that not only in the body of the act are several of its provisions made specifically applicable to foreign vessels, but that conflicting treaties are repealed by it. Not only so, but an examination of Section 4 shows the specific intent of the Congress to regulate or interfere with the provisions of the contract made abroad. I refer to the following, "and all stipulations in the contract to the contrary shall be void." It is common knowledge that under the shipping articles of foreign vessels the wages of foreign seamen are not made payable in this country. The Congress was aware of this and so it stipulated that the payment of the half wages must be allowed regardless of the provisions of the foreign contract. It will hardly be disputed that it had such power. Now, why should not the Congress have also meant what it

said about the payment of the advance being no defense to a libel? For many years the advance had been prohibited in this country. It was not necessary to insert into the act the emphatic provisions about advance payments and to make such provisions applicable to foreign vessels, unless such was the real purpose of the law. It cannot be successfully contended that it was the purpose of the Congress to give any advantages to the foreign ship which was already carrying ninety per cent of our American commerce. It must have been intended to at least put the American Merchant Marine upon an equal basis of competition insofar as this was within the power of the Congress. It is therefore respectfully submitted that there is no such necessary connection between the two sections that a limitation inherent in the one should be inferred to exist in the other, and that such limitation is not necessary in order to obtain a uniform construction of the act. In support of this conclusion reference is also made to the admirable opinion of the learned district judge in this cause.

FOURTH POINT.

In seeking to obtain a review by this honorable court of the decree of the Circuit Court of Appeals, I am not unmindful of the fact that the sum of money involved is small and that it is the cause of persons not citizens of our great country but in making the effort to obtain a construction by this court of the construction of the act involved I am influenced by the belief that the uniform construction of the "Seamen's" Act is highly essential to the welfare of the American Merchant Marine and to thousands of an humble, but brave and useful class of the world's citizenship. The decisions at present are in conflict. The interpretation which I have here contended for has been the interpretation placed upon the act by district courts both upon the Atlantic and the Pacific sea-board. It was established by the district court also in the instant case.

The Ixion, 237 Fed. 142.

The Imberhorn, 240 Fed. 830.

The Delagon, 244 Fed. 835.

The Rhine, The Windrush, 244 Fed. 833.

The last two cases were tried together and since this brief has been written have been decided by a divided court. I cannot cite this case as it has not yet been reported. It is hoped that this honorable court will see fit to lay down a uniform rule and rid the act of the present conflict of opinion. The only case cited by the Circuit Court of Appeals in support of the decree entered in this case is *The State of Maine*, 22 Fed. 734, and it is interesting to note that this case was cited in this honorable court on brief in the case of *Patterson vs. Bark Eudora* (*supra*) and that though decided in 1884 had never been followed until in the case at bar. It is submitted also that the *State of Maine* case was dealing with the act of June 26, 1884, which was amended several times, and finally by the present act and that the conclusions of the learned judge in that case should have but little weight in arriving at a true construction of an act so highly REMEDIAL as the "Seamen's" Act, which was intended to meet entirely new and changed conditions and which has so completely overturned the policies of the past in nearly every way. It is also submitted that that decision rested upon views of international public law which are completely out of harmony with the decisions of this honorable court.

Respectfully submitted,

ALEX. T. HOWARD,
Proctor for Petitioners.

March 8, 1918.

Supreme Court of the United States

OCTOBER TERM, 1917.

NO. 935.

ERIK SANDBERG, CARL JANNSON, S. K. BENJAMINSEN AND JOHN PERANEN,
Petitioners.

VS.

JOHN McDONALD, CLAIMANT OF THE BRITISH
SHIP "TALUS,"

ON WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR THE PETITIONERS.

ON WRIT OF ERROR TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

STATEMENT OF THE CASE.

The Petitioners are foreigners and entered their suit in the District Court of the United States for the Southern District of Alabama, for seamen's wages earned aboard of said vessel. They sailed from Liver-

pool on the full-rigged ship "Talus," which was a British vessel, and after the arrival of the vessel at Mobile, made a demand upon the master for the one-half of the wages which they had then earned, in accordance with the provisions of Section 4, taken in connection with Section 11 of the "Seamen's Act," which is the Act of March 4, 1915 (38 Stat. at Large 1164). These two sections are set out in full on pages 11 and 12 of the Record. A dispute arose between the master and the seamen as to the proper method of figuring the one-half of the wages which they had then earned.

The master had already paid to the seamen by way of advance wages a sum, which added to the amount which they had received on account, exceeded one-half of the wages then earned. The master contended that the advance was a proper credit, for that the payment of seamen's wages in advance, was lawful and customary in British ports, and that Section 11 of the Seamen's Act, prohibiting the payment of wages in advance did not control the matter, because the seamen were not shipped within the jurisdiction of the United States. The seamen contended on the other hand that the correct method of arriving at the one-half wages to which they were entitled under Section 4 of the Seamen's Act was to disregard the advance paid at Liverpool and in doing so, relied upon the following provision of Section 11 of said Act: "THE PAYMENT OF SUCH ADVANCE WAGES OR ALLOTMENT SHALL IN NO CASE EXCEPT AS HEREIN PROVIDED ABSOLVE THE MASTER OR THE OWNER THEREOF FROM THE FULL PAYMENT OF THE WAGES AFTER THE SAME SHALL HAVE BEEN ACTUALLY EARNED, AND SHALL BE NO DEFENSE TO A LIBEL SUIT OR ACTION FOR THE RECOVERY OF SUCH WAGES." The District Court upheld the contention of the seamen and gave full force and effect to the ordinary meaning of the language of the act, but the Circuit Court of Appeals reversed the decree of the District Court in favor of the seamen

and held that it was not the intention of the act to control the payment of advance wages in foreign ports, by foreign ships, to foreign seamen and in its opinion said that the act both prohibited the payment of the advance by declaring that the payment of the same should be no defense to a suit for the recovery of the full wages, and by fixing a criminal penalty and that because the latter could not be enforced, it was the more reasonable construction of the language of the Act to hold that it was the intention of Congress that both provisions should be enforced alike, that is, should apply only to the payment of such an advance within the territorial jurisdiction of the United States. The whole question, therefore, presented to this court is which of the above constructions is correct.

ASSIGNMENT OF ERRORS.

The only error, of course, assigned to the decree of the Circuit Court of Appeals in this cause, is that it failed in its decree to give full force and effect to the above provision of Section 11 of the Act and held that the Act did not prohibit the payment of the advance in this case and that the same was a proper credit in figuring the amount of half wages to which the seamen were entitled to demand.

BRIEF OF THE ARGUMENT.

In attempting to arrive at a true construction of the Seamen's Act, as far as these two sections are concerned, I have attempted to compare the Act of March 4, 1915, with former acts of Congress, but this has not furnished to my mind a satisfactory solution of the difficulty. I have also read the adjudicated cases but cannot say that I find there a conclusive reason for the construction given. A list of cases involving a construction of the Seamen's Act and the acts which it has amended, follows:

The Maine, 22 F. 734.

The Kester, 110, F. 422.

The Troop, 117 F. 557—affirmed by C. C. A.
in Kenney vs. Blake, 125 F. 672.

The Alnwick, 132 F. 117.

The Neck, 138 F. 144.

The Ester, 190 F. 216.

The Jacob N. Haskell, 235 F. 914.

The Ixion, 237 F. 142.

In re Ivertsen, 237 F. 500.

The London, 238 F. 645.

The Strathearn, 239 F. 583.

The Imberhorne, 240 F. 830.

The Rhine and The Windrush, 244 F. 833.

The Delagoa, 244 F. 835.

Patterson vs. Bark Eudora, 190 U. S. 169.

I have found, however, a solution of the difficulty, which is satisfactory to my own mind at least, and which has persuaded me that the conclusions reached by the learned District Judge are correct and I now submit to this honorable court that the true construction is to be found in a serious consideration of the history of the sea, of merchant seamen, and maritime commerce, of the conditions which existed at the time of the passage of the Act, in the evils which it sought to remedy, and in the way in which the Act was understood and intended to be applied by the Congress itself, as shown by the debate, the findings of the Committees of Congress, the contentions raised by the respective interests that championed and opposed it before the Committees that had it in charge.

FIRST POINT.

IT WAS THE BROAD PURPOSE OF CONGRESS TO GRANT TO THE SEAMAN PERSONAL LIBERTY AND TO PROHIBIT AS TO ALL VESSELS THAT CAME WITHIN OUR JURISDICTION THE EVIL OF PAYING THE SEAMAN HIS WAGES IN ADVANCE AND TO THEREBY PROMOTE THE WELFARE OF THE AMERICAN MERCHANT MA-

RINE AND THE AMERICAN SEAMEN BY AN EQUALIZATION OF WAGES.

At first blush, it would seem strange that either the seamen or the ship owners should regard this question as one of the importance that has been attached to it. Indeed, from what appears upon the surface it might not be deemed important, for it certainly does not matter to the ship-owner at what time or at what place the seaman finally pays back to the ship the trifling sum of money that was advanced to him, and, on the other hand, it should not be deemed a matter of vital importance to the seaman, just when he paid back this money to the ship, and this would probably be true even though we multiplied this instance by the thousands of other cases when it would occur. I would not gainsay that it is well for the seaman, both materially and otherwise, to be made independent, by having a portion of his wages paid to him at different ports where the vessel touches upon a long voyage,—but on a close analysis of the situation that is brought about by the happening of the facts in this case, we find that there are now, and have been, both before and at the time of the passage of this Act, two contending forces——and it is never so possible to discover the truth as when it is revealed by the conflict of opposing elements. The two forces to which we refer are the organized seamen and the owners of vessels.

It took the Congress of the United States just twenty years to pass the Seamen's Act and during this time both forces and the public were given a full opportunity to be heard. Both sides were vitally interested, fully prepared and ably represented.

While there is a great deal of sentiment in the seaman's side of the case, the main factor in the consideration of this legislation by Congress was the economic one, and far as the real intention of Sections 4 and 11 is concerned, it was a question that vitally affected

the American Merchant Marine, at least in as great degree as it did the welfare of the seaman—and that was the question of an equalization of wages and when we consider in all of its aspects this question of an equalization of wages we immediately realize just how important the true construction of these two sections is to the American Merchant Marine as well as to the seamen.

It is common knowledge that the wages prevailing in American ports are high and it is easy to see that the vessel that ships her crew in a foreign port where wages are low, has a great economic advantage, which is greatly increased by the original cost of construction of the ship, from 33 1-3% to 50% less than in the United States. About 75% of the world's cargoes are carried by tramp steamers. It is natural, that when a seaman who is shipped in a foreign port where wages are low, arrives at an American port where wages are high, he should wish to take advantage of an opportunity to obtain better wages. On the other hand, if he is a good seaman, the owners of the vessel do not wish to lose him. Under the terms of the Seamen's Act (Section 4), the foreign seaman can demand at every American port where the vessel loads or discharges cargo, one-half of the wages which he has then earned, and he is thereby given the opportunity to obtain higher wages on another vessel without having to sacrifice altogether the rewards of his toil. When he thus quits the vessel, the foreign vessel must replace him with another seaman at the wages of the port, and there is thereby put into operation the grand theory of the Seamen's Act insofar as these two sections are concerned, viz., an equalization of wages, and the giving thereby of an opportunity to the American Merchant Marine to compete with the foreign vessel.

When one considers the extremely low wages prevailing in some European ports and especially in the Orient, one sees how important becomes the full real-

ization of the theory of Congress as to an equalization of wages. Since this case was brought in the District Court, the importance of obtaining a true construction of the Seamen's Act, that will put into effect this theory of Congress has been multiplied by the tremendous increase, present and proposed, of our Merchant Marine.

It is therefore earnestly contended that in interpreting the Seamen's Act, a proper regard must be had for the welfare of the American Merchant Marine, and that its true meaning can only be gotten at by considering the conditions which existed at the time the law was passed. The American Merchant Marine, in the over-seas trade had been gradually disappearing from the ocean from about the time of our Civil War. The advantages of cheap labor and cheap construction, when emphasized by hurtful and antiquated navigation laws and conditions which drove the American boy from the sea, were too great to be overcome by the American ship. What little opportunity there was of an equalization of the wages paid here and abroad through the foreign seamen deserting in an American port, was taken away by treaties and statutes, under which the seaman so deserting, was arrested, thrown into jail and then sent back to his vessel, and the American people were thus lending the aid of their own laws to the enjoyment of the advantage already had by their foreign competitor.

The history of the seas shows that when all other workmen were slaves, the seaman was a free man and sea-power reposed in those nations which had the best seamen. Independence, wealth and world dominion belonged to those nations that encouraged their peoples to follow the sea and carry on maritime commerce. Ships were smaller, their equipment imperfect and the seas were infested by pirates and in those days even the owners themselves recognized that the safety of their property required that their seamen be men of

resolute courage and character and these qualities are to be found only in free men. Then came the days of Mediaeval Europe when all workmen became serfs, but even then, a fair degree of personal freedom was enjoyed by the seamen, but neither nations nor ship-owners caught the great principle that underlay the question of personal liberty and they came gradually to believe that their selfish interests required that they have a stronger hold upon their seamen.

Laws were passed, making it a crime to desert the vessel in a foreign port and treaties were entered into with other nations under which deserting seamen were returned to their vessels. The former custom of paying the seamen their wages at the same time the freight monies were paid was abandoned and laws were passed providing that seamen's wages should only be paid in the home port and the seaman became, economically also, a slave. Then came the French Revolution liberating all other toilers, but the seaman was forgotten and remained a slave.

There is something about the sea, its common hazards, the nature of the seaman's calling, the fact that tradition requires him, if need be, to give up his life for the passengers, or to save his mates, which seems to call for freedom, and the nations which in the past have controlled the sea have been those whose seamen were free. This natural desire of the seaman, throughout the ages to be free, has caused him to be willing to sacrifice every other consideration to obtain it. He has always deserted, even in the old days when he was branded for so doing, with a hot iron, and in order that he might be free has been willing to give up all of his wages. Unscrupulous men ashore came to know this. The masters, of course, realized it. The seaman would desert his vessel and promise his hard earned wages to some man ashore, if he would procure for him employment aboard of another vessel and this man would go to the master thereof and bar-

gain with him about the matter. The seaman got his employment and some measure of freedom, but the "crimp" and the master got his wages.

Thus we see that the "crimping" system and the practice of paying the seaman his wages were born together and until the passage of the Seamen's Act, they always went hand in hand, not only to the destruction of the moral and economic welfare of the seaman but to his personal liberty as well. All these things were brought home to the Congress and it is interesting, as well as gratifying to note that the same section of the Act (11) which prohibited the advance also prohibited, under heavy penalties, the payment of remuneration for obtaining employment for seamen.

It needs no argument to show that the payment of his wages to the seaman in advance is essentially a bad thing and it is striking to note that at the time when all other workmen were attempting to obtain laws providing for the payment of their wages at shorter intervals, the seaman was forced to enter into agreements with shipping masters and master mariners by which he was compelled to accept the payment of of his wages in advance, with the idea, of course, that he should never receive them at all, but that upon one pretext or another, by hook or crook, his wages should fall into the hands of the "crimp" and the unscrupulous master, the latter of whom often sought to increase his usually small remuneration thereby. It is easy to see that this practice also tended to further the helplessness and dependency of the seaman and to increase the hold had over him by vicious men, as well as to make more numerous the devious methods by which their ends were accomplished.

The seaman is not by nature aggressive in looking out for his own interests nor is he very thoughtful in conserving his economic welfare. It is useless to speak of the fact that the seaman has signed a con-

tract, and like other men, must be held to it, or if he breaks it, should suffer thereby as do other men who contract. In the first place other laborers, as a rule, who perform personal service, are not required to enter into contracts, and besides the conditions surrounding his employment are different and unequal. He either signs the articles and sails, or he remains a landsman.

He is not adapted by nature, nor by training to the protection of his legal rights, he is easy-going and good-natured, and because he goes to strange lands where he is unfamiliar with the language and the laws, he is more or less helpless and dependent. It is for these reasons, as well as for the high character of the service that he performs in carrying on the world's commerce, that he has been regarded as the ward of the courts of admiralty. It has for a long time been recognized that the payment of his wages in advance, puts an easy weapon into the hands of the unscrupulous, who would prey upon his helplessness and that the practice of crimping seamen had its origin in the advance, or allotment to original creditor. Finding himself unable to obtain employment without going to a crimp, he gradually came to allow himself to be handled by the crimp. The master made an agreement with a crimp to furnish men at a given wage, and with such an advance as the laws of the country, or of the port would permit and the master and the crimp divided the amount and in some instances this practice of certain master mariners became so pronounced that the managing owner demanded his share.

It is for these reasons that the Federal Courts have so often denounced the advance and that the Legal Aid Society and other benevolent institutions which have fought for the seaman, have at last obtained in Section 11 of the Seamen's Act, a law which properly enforced, will break up the practice forever.

"The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs, is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea, the sailor is powerless, and no relief is availing. It was in order to stop this evil, to protect the sailor and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

Mr. Justice Brewer in *Patterson vs. Bark Eudora*, 190 U. S. 169.

The learned judge, who wrote the opinion of the Circuit Court of Appeals says that he can find in the Act no expression of any intention on the part of Congress to prohibit the payment of such an advance outside the territorial jurisdiction of the United States and that he regarded the same as "*malum prohibitum*" only, and that therefore the payment of the advance in this case should not be disallowed to the "*Talus*" but was a proper credit against the half wages demanded by the petitioners. The language of the Act, is, however, broad enough to cover such an advance, and it is earnestly submitted, that even if this were not the case, the payment of such an advance ought not to be upheld by an American court, when it is passing upon the civil rights of the parties with the *res* before it, because so clearly opposed to our public policy.

To thus uphold the payment of the advance to seamen at foreign ports, when the vessel is bound for an American port will not only defeat the purposes of the Act, as far as the personal freedom of the seaman is concerned, but the practice will be used, as has been pointed out, to defraud him of his wages and to otherwise take advantage of him, so that if the payment of the same is to be allowed as a credit (as held by the Circuit Court of Appeals) the seaman's demand for half wages under section 4 upon arrival here, could be defeated and the whole theory of the law as to equalization of wages destroyed.

The master of a foreign vessel could, of course, avoid the loss of his crew in an American port by the very simple method of paying them the wages of the port, and by so treating the seamen that he would not wish to reship upon arrival here. In this way, he would simply be carrying out the same selfish desire to protect his own interests as actuates the seaman to leave the vessel at an American port to obtain better treatment and higher wages. The fact that the foreign ship-owner is not willing to do this, proves that behind his real opposition to the enforcement of the Seamen's Act is his altogether human and ordinary desire to pay just as small wages as possible. Even should there be no fraud in connection with the payment to the seaman of his wages in advance, the foreign owner can easily defeat the purpose of the Act and prevent the enforcement of the half wages section (4) of the same by simply paying at the port of shipment such a sum by way of advance as will equal or exceed in amount the one-half of the wages which the seaman would otherwise have been entitled to demand. The whole theory of the law as to equalization of wages would therefore fail, unless the seaman on finding on his arrival here that the payment of the advance had defeated his right to demand half of his wages under section 4 of the Seamen's Act, should be willing to quit the vessel and lose all of the wages which he had

then earned in order to obtain the wages of the port. If the construction placed upon the Act by the Circuit Court of Appeals shall prevail in this court, then, as it is the general practice among British and other foreign owners of vessels to pay their seamen wages in advance of the time they are earned, they will have at hand not only an easy method of defeating the demand of the seaman for half of his wages on arrival in American ports, but by conspiring with crimps, shipping masters, boarding house keepers, shop-keepers and other creditors of the seaman, (who get most of the advance wages paid to him anyhow), of rendering generally ineffective the provisions of the Act granting the seaman freedom from arrest for desertion, by using as a club his helplessness, and his natural desire not to lose the reward of his toil. This purpose of the act, to abolish arrest for desertion is another "thorn in the flesh" of the foreign ship-owner. This is manifested by the heavy sentences which they are even now inflicting upon deserting seamen, once they get them back within their jurisdiction. Their resentment at the extension by this country of its beneficent system of laws to them is also exhibited by their recent attempt to get the Congress to repeal these provisions of the act, and to their shame, it is most deplorably shown by their action sometimes in this country, now that they have been deprived of the assistance of federal officers, of appealing to the unscrupulous officers of municipal governments to harass the seaman by prosecutions on charges real and imaginary when he has left the ship.

I said above, that while the purpose of the Act was to equalize the wage cost of operation so that the American vessel could compete, there was also present, and urged upon the Congress, as far as the seamen are concerned, certain sentimental considerations. In the first place it is sincerely believed by the friends of the seamen, that the character of men who follow the sea depends, not only upon his wages, but upon

the manner of his treatment, the conditions aboard of the vessel and the dignity of his occupation. Following the sea is an ancient and honorable profession, and one very essential to the welfare of mankind, but it has been the one occupation that has not been allowed to keep step with the progress of the times. Up to the time of the passage of the Seamen's Act, he was the one laborer who could not voluntarily quit his task and take up another, not only was the seaman held to be exempted from the operation of the Thirteenth Amendment, which freed all other men under the American flag, but his calling was surrounded by conditions which tended to make him all the more a chattel, some of which conditions, particularly the payment to him of his wages in advance, have already been pointed out. Amongst other evils surrounding the occupation there grew up the shameful practice of "Shanghaiing," also a bye-product of the advance.

It also should not be forgotten that the treatment of seamen aboard some vessels, by the masters, and the condition of the forecastles, the "prisons of the sea," often compelled the seaman to leave one vessel and go to another, even at the price of losing all of his wages. All of these conditions affected the seaman's life and determined whether his calling should be an attractive one, for it is common knowledge that free men, especially those of the Anglo Saxon race, are not induced to follow an occupation surrounded by the foregoing conditions.

Therefore, in considering the problem of a true construction of the Seamen's Act, as far as these two sections are concerned, it is necessary that we consider not only the fact, that because of these conditions the American Merchant Marine was rapidly disappearing from the ocean at the time of the passage of this act, but that the number of seamen from the other enlightened nations of the world was also on the decline and

that those from the low paid laborers of Europe and especially from the Orient, was on the increase.

This brings me to a consideration of another sentimental side of the seaman's case, which, like the theory of equalization of wages, affects the great public. It is very striking that under the above conditions, causing the scum of the labor market of Europe, Chinese, Malays and South Africans to follow the sea and turning away from it the high spirited men of the free peoples of the earth, there was increased amazingly the danger of travel by sea and the world was shocked by many great horrors and disasters, such as the "Titanic." As her equipment became more splendid, her appointments more luxurious, and her size multiplied many times, the character of the men who sailed her so deteriorated that the Congress of the United States saw that something must need be done not only to give the American Merchant Marine a chance to live, and to grow, but as the very title of the Act expresses it, "To promote safety at sea."

There was also urged upon Congress at the time this law was before it, another idea, which the events of the past few years have shown to be of transcendent importance to the American people, and that idea is that sea-power is in the seaman, and that a nation without sea-power cannot long endure. The ship and her equipment are only tools and without a trained crew to use them she would "rot in her neglected brine." As without trained seamen of a high class from the nation to which the vessels belong, there can be no merchant marine worthy of the name, so, without a merchant marine, there can be no naval reserve.

"Spain, once all powerful on the sea, could not man the battle-ships which fought under her flag at Trafalgar (Mahan, Sea-Power in History). The Spanish Armada is often said to have been overcome by the elements and the proud Philip so declared; but Professor James Anthony Froude in his lectures, 'English Sea-

men of the Sixteenth Century,' gives the true explanation. England was sending some of her best blood to sea and her seamen so improved the rig and sailing qualities of their vessels that they 'could work to windward with their sails trimmed fore and aft.' The foremast was changed into a jib boom; the aftermast into a spanker boom; fore and aft sails were put on them; the trusses were improved and the English vessels could fight under sail. 'The English ships had the same superiority over the galleons which steamers now have over sailing vessels. They had twice the speed; they could lie two points nearer the wind.' Favored by a brisk wind they could choose their own positions from which to use their guns. It was better vessels designed and handled by better seamen that destroyed the Spanish Armada. 'It was to the superior seamanship, the superior qualities of English ships and crews, that the Spaniards attributed their defeat.' (English Seamen of the Sixteenth Century, p. 4).

"When the Revolutionary wars opened the fleet of France was, in vessels, men and guns, about equal with the English; but England could reman her vessels five or six times, while France could not do so once. France had to resort to landsmen, whom she trained in harbor until they could dismantle and re-rig the vessels with remarkable speed; but after a gale at sea the vessels were like wrecks. The English vessels might leave the harbor looking like wrecks; but after a couple of days at sea, they were in the very best of trim and fitness. (Mahan, Sea-Power in History.)"

The above quotation is from "American Sea-Power and the Seamen's Act, by Andrew Furuseth.

Senate Document 228, 65th Congress, 2nd Session.

The soundness of this theory of the law is not only supported by reason, but is shown by the practical operation of the law. It is not only adapted, when properly enforced, to equalize wages, but is actually accomplishing that very thing.

"The effect of the Seamen's Bill as enforced, particularly as to the provisions relating to advance notes or advance wages, and the right of seamen to collect half their wages in American ports, as applicable to American and foreign vessels, is by far the greatest and most important of anything that has transpired in the shipping world in a long time. The Legal Aid Society took action in favor of abolishing the advance note or of making a law abolishing the payment of wages in advance of the time earned; this action was taken when the bill was pending before the Committee on Merchant Marine and Fisheries in Congress. Our activities were in line with the provisions of the Seamen's Bill, abolishing involuntary servitude and removing the remedies given to foreign governments and foreign ship-owners, to arrest seamen who desert in ports of the United States. Seamen, being given a right on American and foreign vessels alike, to demand one-half wages, or half the wages earned by them and unpaid, in American ports, have been able to enforce that right by the provision of the law which enables them to bring suit for the full amount of wages owing them, in case the master refuses to pay them half. I am inclined to believe the theory and actual operation of the Seamen's Bill is bound in time to prove its soundness and efficiency.

"I am informed that seamen coming here on foreign vessels which are sent to American ports to compete in American trade leave their vessels unless the Master voluntarily guarantees them an increase in wages, which will bring their earnings up to a par with the average earnings of American seamen, and other seamen in American ports, which have already arrived at the American standard. As a rule, seamen on foreign ships demand one-half their wages and then quit. The result is, the foreign ship's master must refurnish his vessel with a crew before leaving. To do this, he must apply to shipping masters or one of the Seamen's Institutions who supply seamen, but he has to pay the going rate of wages in the port of New York or Norfolk, or whatever port he happens to be in.

"One need not be a mathematician or a student of economy to conclude that the enforcement of this legislation means the creation of an opportunity to the American ship-owner to compete with foreigners on a par, so far as the labor cost is concerned, and secondly, gives America an opportunity to build up a Merchant Marine by reason of the fact that higher wages are paid on board all vessels, and rules for Safety Appliances, better food, larger crews' quarters, and general conditions on board are enforced on American vessels." (41st Ann. Report, Legal Aid Society.)

If the Seamen's Act shall result in promoting the welfare of the American Merchant Marine, it will of course, extend American commerce generally, and benefit all of our people for it is well-known that it is the merchant ship and those who go with her that bring to us commercial information as to other peoples and their methods of trade, and thereby pave the way for the entrance of our goods.

There has always been something peculiar about the things of the sea. Maritime commerce is not like commerce by land, and the calling of the seaman has always been regarded as a peculiar one, and it has been for this reason that it has been regarded as necessary to impose upon him the condition of involuntary servitude. It is therefore not unnatural, when we consider the length of time this legislation was under consideration by Congress, the peculiar conditions surrounding the subject, and the fact that it was bitterly fought over, that the "Seamen's Act" should be somewhat technical, and in submitting to this honorable court the theory that it was the purpose of Sections 4 and 11 to equalize the wages paid by American and foreign vessels, I have included this discussion of the general purposes of the Act, and the conditions existing before its passage, because I believe that resort must be had to all of these to arrive at a true construction of these sections. And this honorable court has

laid down the rule that whenever any doubt arises as to the intent of an act of Congress, the whole act must be construed together.

In endeavoring to submit to the honorable court the economic purpose of the Act, I desire to say that to my mind the loftiest purpose of the Act is to extend to the seaman as a human being, the foreign seaman, as well as our own, a full measure of personal liberty and that he might thereby attain unto that character and standing, which is to-day the opportunity of all other classes of labor, and it is submitted also that it is only in this way, and by the consequent lifting of the dignity of the occupation that the free people of this great land can be induced to follow the sea—and also that there might be accomplished through better seamen that other great purpose of the Act, the promotion of safety at sea.

SECOND POINT.

THE LEGISLATIVE HISTORY OF THE SEAMEN'S ACT SHOWS THAT ITS PURPOSE WAS TO EQUALIZE WAGES.

There can be no question that the former acts of Congress dealing with our Merchant Marine and Merchant Seamen had failed and that at the time the Seamen's Act of March 4, 1915, was under consideration Congress appreciated the failure of these old laws, recognized that the American Merchant Marine was in a state of decay, had presented to it the reasons therefor, and saw clearly that something must be done, or we would be swept from the seas. Not only had the need of such legislation been urged upon Congress for twenty years, but an act substantially the same as the present one was actually introduced in the 56th, 57th, 58th, 59th, 60th, 61st and 62nd Congresses and the present act was passed by the 63rd Congress.

The general purpose of Congress to get away from the old theories and the old laws, is first of all shown by the abrogation of treaties. We had treaties with

practically all of the important maritime nations, under which foreign seamen were held in involuntary servitude, and all disputes concerning seamen's wages and the internal discipline of the vessel were left to the respective consuls of these nations. Not only so, but they were even permitted in engaging seamen in American harbors to pay wages in advance, regardless of the American statute prohibiting our vessels from doing the same. We had no treaties with Great Britain, Russia or Japan. There is a vast amount of American capital invested in foreign ships and these interests, as well as the foreign owners themselves, bitterly contested the taking away from them of their old advantages over the American Merchant Marine and their old hold over their seamen. This idea that the seaman should be made free was revolutionary. No other nation in modern times had conceived of such a thing.

These interests had able supporters in Congress. On August 5, 1912, the act was submitted to the Senate and referred to the Committee on Commerce, by which it was referred to a sub-committee. On February 26, 1913, Senator Burton, Chairman of the sub-committee, reported the act back to the Senate, with an amendment in the nature of a substitute, in which the half-wages section contained the following provision.

"Provided further, that this section shall apply to seamen on foreign vessels owned in major part by American citizens, corporations or holding companies, when such vessels are in harbors of the United States."

The Act was passed, but the President did not sign it and it did not become a law. It was introduced in the same form at the next session, but Senator La-follette offered as a substitute the act in its present form, which was passed and signed by the next President, Woodrow Wilson. The above provision limiting the scope of the act, so as to save foreign vessels failed.

Speaking in opposition to the act as it now stands, Senator Burton said, in part:

"The bill is ingenious from the standpoint of the seamen. I am not going to blame them for that. It has three provisions: First, a man may desert without arrest; second, at any port, on giving forty-eight hours' notice, he may have half of his pay; third, no allotment shall be given out of his wages.

"That makes it possible for the sailor to leave his employment wherever he chooses, and whether his contract is finished or not, whether the time for payment has accrued or not, he may receive half his wages."

The Senator attacked these provisions of the act as violative of the principles of international law. Evidently not mindful of the fact that the efficiency of former legislation in this behalf had been killed by a saving clause, excepting from its operation matters regulated by treaties, the enemies of the bill attempted to add to Section 4, the following provision:

"Provided that treaties in force between the United States and foreign countries do not conflict herewith."

This proviso was lost and the act as finally passed uses the following language: * * * and any other treaty provision in conflict with the provisions of this act, ought to be terminated, etc."

When the act was before the 62nd Congress, at its Second Session, it was referred to the Committee on Merchant Marine and Fisheries, which committee reported to the House, in part, as follows:

"Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in ports of the United States; hence the operating expenses of foreign vessels are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, but it is proposed by this bill to give

the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyages. That will equalize the cost of operation, so that vessels of the United States will not be placed at a disadvantage."

(Report 645, 62nd Congress, 2nd session, p. 7.)

A minority of the Committee, recognizing and admitting the purposes of the bill as reported, submitted a minority report, which reads, in part, as follows:

"Those who favor this bill strongly opposed amendments offered proposing to limit the scope of the bill to our own sailors and our own ships. We think this nation is undertaking a large and unnecessary task in assuming to tell foreign nations how they shall man their ships, what contracts they shall make with their own seamen, how they shall pay them, what their qualifications shall be, and even dictating to them the language that their crews shall speak—not on American ships, remember, but upon their own ships and upon every vessel that comes into our ports. It is proposed to do all these things in this bill. In other words, since Congress by its stupidity, its lack of intelligence or patriotism, has driven the American ship from the ocean, we now solmenly undertake to regulate and control all the ships of all the other commercial nations of the world, not for our own benefit, not because any American citizen has complained, but for the benefit and upon the complaint of foreign sailors that are unable to receive, as is claimed by their American representatives, just and proper treatment from the nations that they continue voluntarily to serve."

(62nd Congress, 2nd Session, Report 645, part 2, pp. 2, 3, 5.)

During the time when the present act was in the course of its final victorious passage by the 63rd Congress the Committee to which it was referred, reported to the House of Representatives, in part, as follows:

"It is claimed that by making the provisions in Section 3 of the Senate Bill and Section 4 of the Committee substitute (the half-wages section—now Section 4, of the Seamen's Act) apply to foreign ships it will tend to equalize the operating expenses of vessels. It is also claimed that the provision of this bill abolishing arrest for deserting would be largely annulled if the foreign ship-owner may by the terms of his contract deny the seaman the right to receive in our ports any part of the wages earned by him; that while the deserting seaman would not be subject to arrest, he would be compelled, if he deserted, to do so without a penny in hand to buy bread or procure a night's lodging; and it is claimed also that if American vessels are subject to the provisions allowing seamen to demand half their wages earned, while foreign vessels are not, the ship-owner might and probably would put his ship under foreign flag, to avoid this obligation. * * *

"As the provision now stands it discriminates against the ship-owner of the United States and Great Britain and of those other nations with whom we have no treaties in conflict with it, if it is a real burden on ship-owners. If, however, giving greater freedom to the seaman shall operate not only to equalize, but to elevate and better the condition and service of the seaman, which is its purpose, then the provision will justify itself and be of benefit to the American Merchant Marine in equalizing the cost of operation as between our ships and those of other nations."

Report 852, 63rd Congress, 2nd Session, pp. 19 and 20.

During the time the bill was pending before the different sessions of Congress, an opportunity was given to those interested to be heard before the committees of the Senate and of the House, having the bill in charge, and the seamen submitted their petitions and memorials, the most specific and urgent of which was presented by Honorable William B. Wilson, (now the Honorable, the Secretary of Labor), which read, in part, as follows:

MEMORIAL TO CONGRESS.

To the Honorable, the Senate and House of Representatives of the United States:

On behalf of the seamen, your petitioners respectfully represent that—

While the existing discrimination against the seamen is permitted to continue the United States cannot become a sea-power; that native Americans will not become seamen; and that the differential in wage cost of operation will prevent American vessels from competing on the ocean.

Under the treaties with foreign nations and these laws seamen, having signed contracts to labor in countries having a lower standard of life and a lower wage, were forcibly compelled to continue to labor within the jurisdiction of the United States.

This produced a difference in the wage cost of operating vessels taking cargoes from ports of the United States, the difference being in favor of the foreign vessels, and sufficient in amount to gradually drive domestic vessels from the ocean. (Testimony, Merchant Marine Commission.)"

The history of Section 11 of the Act, which prohibits the payment of advance wages, also shows clearly and unmistakably the purpose of Congress to bring the foreign vessel within its terms, and not only to prohibit the payment of the advance in American ports but to so regulate the payment of seamen's wages, as to prohibit the payment of the same abroad by any vessel bound for an American port. There was the same bitter fight over the provisions of the act making it applicable to foreign vessels and the result was that when the act passed the 62nd Congress, the Section (11) prohibiting the payment of wages in advance was limited to advances paid within the territorial jurisdiction of the United States by amending sub-section (e) to read as follows:

"That this section shall apply as well to seamen engaged in ports of the United States for service on foreign vessels as to seamen employed on vessels of the United States. * * *

Before this sub-section had been thus amended it read as follows:

"That this section shall apply as well to foreign vessels as to vessels of the United States •
• •"

At the next session, the 63rd Congress passed the bill in its present form and the President signed it and it is respectfully submitted that by changing this provision of the bill so as to make it apply "AS WELL TO FOREIGN VESSELS AS TO VESSELS OF THE UNITED STATES" instead of merely "TO SEAMEN ENGAGED IN PORTS OF THE UNITED STATES FOR SERVICE ON FOREIGN VESSELS," the Congress showed beyond a doubt that the purpose of the law was to prohibit the advance to the full extent for which I have contended and to thereby equalize wages and to make possible the enforcement of the other humane provisions of the Act.

This deliberate purpose of the Act is still further shown by the fight which ensued in the Senate, just before the bill was finally passed, over the following proviso which was sought to be added to sub-section (e) by the friends of the foreign vessel:

"Provided, that treaties in force between the United States and foreign nations do not conflict."

This proviso was defeated and the bill as finally passed, not only abrogated certain provisions of our foreign treaties, but also "any other provision in conflict with the provisions of this Act."

THIRD POINT.

THE THEORY OF THE CIRCUIT COURT OF APPEALS IS WRONG.

The conclusion which I have reached by a consideration of the conditions existing at the time the Act was passed and the purpose of the Act as shown by its legislative history would also be reached if we gave to

the language of the Act its ordinary meaning. The Circuit Court of Appeals did not give to the language of the Act its clear meaning but held that there must have been an intention on the part of Congress to limit the ordinary meaning of the language used because the Act provides a criminal penalty for the payment of advance wages as well as a civil remedy for the recovery of the full wages regardless of the advance. Congress could not have intended to punish the master of a foreign vessel for an act committed beyond the jurisdiction of the United States. It must therefore have meant only to punish the payment of advance wages within the harbors of the United States, and therefore, argues the court, it must also have intended the civil remedy provided by it to run concurrently with the punishment for the crime.

In giving this construction to the Act, the learned court not only overlooks the remedy which the Act has provided and the purposes to be accomplished by it, but has hit upon a theory of construction which is supported by no recognized legal rule of interpretation of statutes. In the first place it fails to give to the clear language of the Act, which is unambiguous, its ordinary meaning.

Bernier vs. Bernier, 147 U. S. 246.

Washington Market Co. vs. Hoffman, 101 U. S. 115.

In the second place it holds that where an act contains both a criminal and civil provision, the civil provision should be limited by the application of the criminal, and if the remedy sought to be furnished by the punishment of the crime should fail, for reasons of questionable constitutionality, the civil remedy should also be struck down, or rather should be so limited by a consideration of the application of the criminal provision as to give it the same field of operation, whereas the reverse is true.

United States vs. Twenty Five Packages of
Hats, 231 U. S. 358.

Respectfully submitted,

ALEX. T. HOWARD,
Proctor for Petitioners.

September 16, 1918.

I hereby accept service of a copy of this brief, this
the 16th day of September, 1918.

PALMER PILLANS,
Of Counsel for the Respondent.

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STATEMENT OF THE CASE

This was a libel brought under the so-called "Seamen's Act." The libel was filed by Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. Benjaminsen and John Peranes. At the hearing it developed that in no aspect of the case were Persson and Evanger entitled to recover, and the libel was therefore dismissed as to them. As to each of the others, a decree was rendered in his favor against the ship and the sureties on her claim bond. This brief will deal, therefore, only with the cases of those libellants in whose favor decrees were found, by the learned district judge, reference to the "libellants" throughout intending the successful libellants.

The libel, besides the necessary formal parts, charges a demand, at Mobile, made under the Seamen's Act, for a one-half part of the wages then earned, and a declination by the master to pay the amount the seamen claimed to be due. There was not a total failure to pay, but a computation by the master of amounts less than the seamen claimed to be due. The master paid each of them what he (the master) conceived and computed to be due, and the amount in controversy, as to each man, is the difference between what he got and what he claimed he should have had. (Rec., 20).

The answer set up two defenses, either of which, if correct, would defeat libellants' causes of action. The first was that the master was entitled to deduct, in computing what was to be paid, the advances made to the seamen upon their signing on. This defense was sustained by the learned Circuit Court of Appeals for the Fifth Circuit, and is the question now agitated here. The second was adjudged against the ship by both the courts below, and is therefore no longer in the

case. (The libel is set out on pages 4 to 6 of the record, and the answer on pages 8 to 10).

There is no dispute about the facts; they are set out in the shape of an agreed statement of facts on pages 19-20 of the record. Reducing that statement to narrative form, the status on which the cause was determined may be thus put:

The "Talus" was a duly registered British ship and all libellants were citizens or subjects of nations other than the United States and were employed as seamen at Liverpool in the Kingdom of Great Britain. At the time of their employment, before they boarded the ship or performed any service upon or for her, they were made advances at Liverpool by the ship or her agents, which advances did not, as to any libellant, exceed the amount of one month's wages.

The making of such advances in British ports, to the amount of one month's wages, is not forbidden by the laws of Great Britain, and is usual and customary.

Libellants regularly entered upon their service as sailors and remained on the ship during her voyage across to Mobile, and remained on her in Mobile harbor until they left the ship on February 24th, 1917.

During the voyage across, at Barbadoes and at Mobile prior to February 22nd, 1917, libellants had received payments in cash and in articles furnished and charged to them, in amounts which are without dispute.

The "Talus" discharged and loaded cargo at Mobile and remained at Mobile until after February 24th, 1917. While she was thus at Mobile, the libellants on February 22nd, demanded of the

master of the "Talus" payment of the one-half of the wages earned by them to that date, whereupon the master paid to each libellant a sum which, with the credits just above mentioned as the undisputed credits, and with the said advances made at Liverpool, equalled or exceeded, as to each libellant, one-half of the wages then earned by each libellant from the commencement of his services, but which was less than such one-half if the advances at Liverpool were not to be included in the credits charged against each libellant. The master claimed the right to credit or deduct the advances made at Liverpool, and refused to pay without taking into account such advances, and in making the payments that he made, he did in fact deduct the advances.

The sums paid by the master at Mobile to each libellant, as to each libellant exceeded the total amount of wages earned by such libellant during the eleven days the ship had been in American waters, she having arrived on February 11th, at Fort Morgan, at the entrance of Mobile harbor.

On February 23rd, 1917, libellants libelled the ship, and on February 24th, 1917, quit the vessel, removing their clothes and effects, and were duly logged as deserters on that day.

It was further agreed that the amount four by the District Court to be due to the libellants, is correct if the court were right in holding that the advances at Liverpool should not be deducted; and it was further agreed that if the advances should be deducted and the District Court erred in holding that they should not be deducted, then the proper decree would be to dismiss the libel as to all libellants.

From the decree of the District Court, claimant appealed to the Circuit Court of Appeals for the Fifth Circuit, which court reversed the trial court and remanded the cause with instructions to dismiss the libel. Libellants thereupon applied to this court for and got a writ of certiorari to bring the matter for review before this court.

This statement of the case is made because the statement in the brief of petitioner's leading counsel is very meagre, and is framed in an argumentative fashion rather than as a direct allegation of the facts; and the statement in the brief of petitioner's associate counsel, while fuller and not put argumentatively, still, as it seems to respondent, leaves the case short of that clear picture of the foundation facts that an appellate court must have to review properly a decision.

BRIEF OF THE ARGUMENT

The statutes of the United States condemning and penalizing advances to seamen, and declaring that such advances shall not be charged against the seaman, but that he may recover full wages just as though such advances had not been made; have no application to advances made upon the shipment of a foreign crew by a foreign vessel in a foreign jurisdiction. This being so and it being conceded that the advances in the instant case were made in Great Britain and were lawful there, it must follow that they are proper charges against the seamen, and therefore must be deducted in computing what amount is due them; for it can hardly be, and is not in this case attempted to be, gainsaid, that if a seaman, at the time of demand made, has already been paid a sum of money

which equals or amounts to more than one-half of the wages earned since the beginning of the employment, and such payments were lawful, he is not then entitled to anything at all.

Act of Congress of March 4th, 1915, (commonly styled the "Seamen's Act") Sections, 4, 11 (a) and 11 (e); 38 Stats. at Large, 1164 at 1165, 1168 and 1169 (U. S. Compiled Statutes of 1916, Secs. 8322, 8323 (a) and 8323 (e).)

Sub-section 10, cl. (a) and cl. (f), of Sec. 24 of Act of Congress of December 21st, 1898; 30 Stat. 755, 763.

Section 10 of the Act of Congress of June 26th, 1884, commonly known as the Dingley Act, 23 Stats. at Large, 55-6.

The State of Maine, 22 Fed., 734.

The Windrush, 250 Fed., 180.

The Elswick Tower, 241 Fed., 706, at 710.

Patterson vs. Barque Eudora, 190 U. S., 169, at 178, 179.

American Banana Co. vs. United Fruit Co., 213 U. S., 347, at 357.

U. S. vs. Freeman, 239 U. S., at 120.

Kenney vs. Blake (C. C. A. 9th Circ.) 125 Fed., 672.

The Alnwick, 132 Fed., 117.

The Neck, 138 Fed., 144, at 146.

The Bound Brook, 146 Fed., 160, at 162.

The Kestor, 110 Fed., 432, at 434, 438, 441, 442 and 444.

The Troop, 117 Fed., 557, at 560.

The Meteor, 241 Fed., 735.

The London, 241 Fed., 863 (affirming The London, 238 Fed., 645).

The Antelope, 10 Wheaton, 66.

Northern Pac. R. Co. vs. Babcock, 154 U. S., at 198.

ARGUMENT

Patterson vs. Barque Eudora, 190 U. S. 169, settled that it is within the power of Congress to subject foreign vessels and foreign seamen to our advancement statute **when the contract of shipment and the advancements are made in an American port**. This, however, is all that the case does settle, for the point for decision and the point decided was as stated above. This clearly appears from the facts of the case, the questions certified to the Supreme Court from the Circuit Court of Appeals and the concluding paragraph of the court's opinion on page 179:

"We are of opinion that it is within the power of Congress to protect all sailors **shipping in our ports** on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels." (Our emphasis).

This advancement law is not a new legislative idea stated first in the Seamen's Act of 1915. It came into being in the "Dingley Act" of June 26th, 1884 (23 Stats.-at-Large, 55-56). This Act was amended several times; among others, by the Act of December 21st, 1898, which was the one under consideration in the

Eudora case; and was finally amended into its present shape by the Seamen's Act of 1915, now under discussion.

The statute in its successive phases has been repeatedly before the inferior Federal courts for construction, but (unless we except **The Ixion**, 237 Fed., 142, which proceeds along a different line of idea and is not really an exception), no case prior to **The Imberhorne**, 240 Fed., 830, had held the statute applicable in such fashion as to condemn as unlawful and not to be taken into computation, advances made upon the shipment of foreign seamen on a foreign ship in a foreign port where the advances are lawful.

The first case to arise under Section 10 (the advancement section) of the Dingley Act (Act of 1884) was **The State of Maine**, 22 Fed., 734. In that case an American ship, in Antwerp, was obliged to pay advances in order to procure a crew, and it was held by that very able admiralty judge, Addison Brown, that the Act did not apply even to an American ship shipping seamen in a foreign port where the payment of the advance was legal. I respectfully commend to the court's attention the opinion in that case.

The sovereign attribute of absolute jurisdiction within its own boundaries, of every nation, necessarily exclusive of the jurisdiction of any other sovereign, is admirably stated by Chief Justice Marshall for the Supreme Court in the **Schooner Exchange vs. McFaddon**, in 7 Cranch, quoted on p. 177 of the opinion in the **Barque Eudora** case in 190 U. S. Of course a statute of one sovereign can have no extra-territorial effect—it cannot extend to and affect transactions had in another sovereignty. The very doctrine applied by our court in the **Eudora** case making foreign ships subject to our jurisdiction and our laws while within our territorial boundaries, by the same reasoning saves them

from subjection to our jurisdiction and our laws as to acts lawfully done in another sovereignty—that is lawfully done with reference to the laws of that other sovereignty. This point is made and clearly put by Judge Brown on p. 735 of the opinion in the *State of Maine* case in the 22 Federal *supra*. It is also stated in *The Elswick Tower*, 241 Fed., 706, at 710, in this language:

“ * * * * * the law of the flag applies where a foreign crew is shipped in a foreign land on a foreign vessel.”

The language of Sec. 10 of the Dingley Act, making this advancement applicable to foreign vessels, is this:

“This section shall apply as well to foreign vessels as to vessels of the United States, and any foreign vessel, the master, owner, consignee or agent of which has violated this section, or induced or connived at any violation, shall be refused his clearance from any port in the United States.”

Now, there clearly cannot be a violation of a law of the United States, or of any other sovereign, save within the territorial jurisdiction of that sovereignty, including in the phrase “territorial jurisdiction” the fictitious extension of the territory to the person, so-to-speak, of each ship of that sovereignty as a sort of floating fragment of its national territory. To put it another way, there cannot be a violation of the laws of the United States by an act done in Great Britain by a British subject and lawful under British laws. The language of the Act does not restrict the territory to which it is applicable, but the necessary restrictions by recognized conceptions of law are such as to make

a specific restriction, in terms, to the United States, entirely unnecessary and idle. Apparently no one thought, prior to **The Imberhorne**, that this statute could have any application to acts done outside of the territorial jurisdiction of the United States. Thus in the **Eudora** case the court say, on p. 178 of the opinion in 190 U. S.:

"And this legislation as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as domestic vessels." (Our emphasis).

One can hardly read the numerous adjudications under this statute without being struck with the careful guarding and confining by the courts, just as was done in **The Eudora** case, of the statute's application to the shipping and advancing or other acts done in the territorial jurisdiction of the United States.

When the Act of 1884 was amended in 1898, the section applying the advancement provision to foreign vessels, read thus:

"That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions, shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation: **Provided**, That treaties in force between the United States and foreign nations do not conflict."

It will be noted that this differs from the similar provision in the Act of 1884 in that it leaves out the

denial-of-clearance provision, fixes a criminal liability upon the foreigner who violates the Act, and makes a saving exception with reference to treaties that may conflict with the Act. Now, it could hardly be contended that a master of a British ship, who had shipped a foreign crew in a British port, could be prosecuted, when the vessel should come within the territorial waters of the United States, because he advanced to the seamen, lawfully under the laws of Great Britain, an amount of money which would be unlawful if done within the United States. In the very nature of things, no man can have "violated" the provisions of the Act unless he do something counter to the provisions of the Act within the territorial jurisdiction of the sovereign passing the Act. Of necessity, to come within reach of the Act of 1898, the things done must have been done within the territorial jurisdiction of the United States.

The same application of the statute of 1898 was made in *The Kestor*, 110 Fed., 432, in what is perhaps the most elaborate opinion in any of the cases in the inferior Federal courts, on this subject. The idea stressed by a number of cases is that while there is no question of the doctrine announced in *The Eudora*, *supra*, (that the language of an Act controls the title, and that this Act is applicable to foreign ships notwithstanding that it is an Act for the relief of American seamen) yet that the Act is in all of its terms and purposes essentially an Act for the protection of Americans, and its application to foreign vessels is an incident to that effort to protect—not an attempt on the part of the United States to take the world under its protecting legislative wing. This idea is notably expressed by Judge Brown in *The State of*

Maine, *supra*. And in *The Kestor*, *supra*, Judge Bradford thus addresses himself to the subject:

"Such prepayment (that is payment of advances contrary to statute) was denounced by the statute, on the assumption that it is operative in case of British seamen shipping in American ports on British vessels * * * Protection to seamen is one of the beneficent purposes of the Act, and the extension to foreign seamen SHIPPING IN AMERICAN PORTS of the same protection as is accorded to American seamen involves no hardship or injustice to the former * * * The broad purposes of the section, undoubtedly, were the protection of American seamen and the promotion of the welfare of the American merchant marine. The prepayment of seamen's wages, either to them, or to others by way of bonus or commission for supplying them to vessels, or on account of indebtedness contracted by them, was found injurious to seamen and detrimental to the merchant service. These were the evils the legislation in question was intended to correct. (Citing and quoting from *The Eclipse*). It was necessary to the most effectual or, indeed, to any substantial accomplishment of the purposes of the section, that a uniform rule should be applied alike to all seamen of whatever nationality shipping in American ports on vessels whether American or foreign. To apply the rule to American seamen shipping on American or foreign vessels, and to foreign seamen shipping on American vessels, but to deny its application to foreign seamen shipping on foreign vessels, would open wide the door to fraudulent evasions of the law, produce uncertainty and embarrassment in its enforcement, and largely

defeat its purpose. * * * For the reasons given, I am satisfied that the provisions of the section were intended to apply to the case of foreign seamen **shipping in American ports on foreign merchant vessels.** * * *

Congress has no authority to declare unlawful or provide for the punishment of acts or offenses wholly done or committed beyond the territory and jurisdiction of the United States. But with respect to subjects committed to it by the Constitution, it has full power to declare unlawful and to provide for punishment of acts and offenses done or committed within the territory or jurisdiction of the United States. The shipping interests of the country are peculiarly within the province of Congress, and it has full control over the American merchant marine. That Congress had authority to enact uniform laws declaring unlawful and providing penalties for prepayment **on the soil or in the ports of the United States** of the wages of seamen of whatever nationality, as detrimental, for the reasons already given, to seamen and the American merchant marine, there can be little or no doubt." (Our emphasis).

The *Kestor*, 110 Fed. Opin. at p. 434, 438, 441, 442 and 444.

This holding in *The Kestor* and Judge Bradford's reasoning and opinion, were approved, followed and adopted in *The Troop*, 117 Fed., 557, at 560. **The Troop case** was appealed and was affirmed by the Circuit Court of Appeals for the 9th Circuit sub nom. *Kennedy vs. Blake*, in 125 Federal, 672.

So in *The Neck*, 138 Federal, 144, at 146, the same construction is put upon the holding in *The Eudora*,

the Court saying in the opinion at p. 146 of the 138 Federal:

"By decision of the Supreme Court in the case of *The Eudora*, 190 U. S., 169, **foreign ships in ports of the United States** are subject to the same restrictions as merchant ships of this nation in the matter of hiring seamen, imposed by the Act of Congress of 1898."

And in *The Bound Brook*, 146 Federal, 160, at 162, Judge Dodge of the District of Massachusetts, says:

"The decision in *Patterson vs. The Eudora*, 190 U. S., 169, establishes that section 24 of the Act of 1898, which by its terms (Clause f) is made applicable to foreign vessels as well as to the vessels of the United States, does properly so apply; and, therefore, so far as affects all contracts of shipment made in the United States, though for service on foreign vessels, that wages paid in advance at time of shipment, may be recovered on completion of the voyage as if they had never been paid, although such payments are not due either by the terms of the contract or according to the law of the country to which the vessel belongs."

Ought it not to seem plain on principle and adjudged authority that the advancements statute has no effect except upon advancements made to seamen within the territorial jurisdiction of the United States? But to make it still plainer, the statute as it now stands has not left the language as it was throughout the time of the decisions cited, but has **ex industria** in terms confined the application to the waters of the United States. Congress has also reintroduced the

clearance clause that Judge Brown so strongly commented on in *The State of Maine, supra*. That portion of the Act is clause (e) of Section 11 of the Seamen's Act of March 4th, 1915, and is contained on p. 1169 of the 38 Statutes at Large. The language is this:

"That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions, shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance in a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with." (Our emphasis).

A well known and often-acted-upon doctrine of the construction of statutes, is that when a statute has received a well defined judicial construction and is reenacted without substantial change in that particular, the judicial construction is adopted by the lawmaker as the proper construction of the statute. (See e. g., *The Windrush*, 250 Fed., 180, at 183). The authorities hereinbefore cited, abundantly show a specific judicial construction of this provision of the Act and an application of it to foreign ships only while in American waters. If the intention of Congress had been to attempt to do what the learned District Judge in the instant case held, and the seamen here insist, that Con-

gress has done, surely it would seem, it is respectfully submitted, that apt words would have been put into the statute to show that Congress clearly intended to depart from this judicial construction and extend the meaning and purpose of the statute beyond that. But Congress not only did not do this, but, on the contrary, apparently wrote into the statute itself, in express words, the judicial construction already adopted by the courts. By the very charter of libellants' rights under which they claim to be paid one-half of the wages earned without any deduction of advancements, it is declared that the advancements portion of the statute has application to foreign vessels only while in waters of the United States. What office have these words to perform in the statute unless it is to confine the condemnation of advances to advances made within the territorial jurisdiction of the United States? If they be deprived of that office, then they seem to be mere idle verbiage in the statute—which this court will not willingly ascribe to Congress.

Heretofore in this brief have been set out in the argument quotations from apposite parts of, and comment on and reference to the several Acts touching the matters discussed in this case. Perhaps a clearer understanding of the ideas attempted to be expressed in this brief, will be aided by now setting out the text of the said apposite portions of the said several Acts, in their chronological order.

The first is the Dingley Act:

"Sec. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay any

person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen. Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than four times the amount of the wages so advanced or remuneration so paid, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages: * * * This section shall apply as well to foreign vessels as to the vessels of the United States; and any foreign vessel, the master, owner, consignee, or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States."

Act of June 26th, 1884, 23 Statutes at Large,
Chap. 121, Sec. 10, pp. 55-6.

Next comes the statute of 1898, construed in **The Eudora** case:

"Sec. 10. (a) That it shall be and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person. Any person paying such advance wages shall be deemed guilty of a misde-

meanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.

* * *

(f) That this section shall apply as well to foreign vessels as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for a similar violation: **Provided**, That treaties in force between the United States and foreign nations do not conflict."

Act of Dec. 21st, 1898, 30 Statutes at Large,
Chap. 121, pp. 755-763.

Then comes the Seamen's Act of 1915, under which this case arises:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from

the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in Section forty-five hundred and twenty-nine of the Revised Statutes; And, provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Act of March 4, 1915, Chap. 153, Section 4
(Sec. 8322 of U. S. Compiled Statutes
of 1916).

"It shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may

also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages * * * shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor, and shall be imprisoned not more than six months or fined not more than \$500.

* * *

This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Same Act, Sec. 11, clauses (a) and (e). (Compiled Statutes of 1916, Sec. 8323, clauses (a) and (e):

And see the pertinent portions of the Acts of 1884 and 1915 set out in parallel columns by Judge Hough in *The Windrush*, 250 Fed., on p. 181.

It was urged below (and the learned District Judge was persuaded to hold) that, as the advancements section makes the payment of an advance unlawful "in any case," and provides that the payment of advanced wages shall "in no case" absolve the vessel, etc., from full payment of wages, the court is bound, notwithstanding that a lawful advance was made in another jurisdiction and out of the territorial jurisdiction of the United States, to disregard the legality of the advance where made, condemn it and decline to deduct it. It is respectfully submitted that this line of reasoning overlooks two essential factors.

The first is that the United States cannot make it unlawful to do an act in another sovereignty. That phase has been fully discussed hereinbefore. The court will not hold, in the absence of language making such holding imperative, that Congress intended to attempt to do that which is manifestly impossible in accord with our notions of national separate entity. There is necessarily and tacitly attached to every enactment of any sovereign, declaring a particular act unlawful, the idea that the act shall be one committed within the sovereignty of the sovereign making the enactment. Such must be the case here. As the United States could not make it unlawful for a British master to pay seamen on a British ship advance wages in Great Britain, it is only reasonable to intend that the Congressional Act, with this idea in mind, not only may be, but must be read thus: "That it shall be and is hereby made unlawful in any case to pay any seaman wages (anywhere within the territorial jurisdiction of

the United States) in advance of the time," etc. It ought to be manifest, it is respectfully submitted, that the words "in any case" do not mean "in any place" or "anywhere," but do mean "under any set of circumstances that may arise when advance payments are made within the territorial jurisdiction of the United States."

American Banana Co. vs. United Fruit Co., 213 U. S., 347, at 357.

And see United States vs. Freeman, 239 U. S., at 120.

Second: It should be noted that it is not the payment of advance wages, without more, that it is declared shall in no case absolve the vessel, but the payment of "such advance wages," that shall in no case absolve, etc. What does the "such" refer to? Unlawful advancements, of course, and no advancements are such unlawful advancements unless they are made within the territorial jurisdiction of the United States.

It ought not to be necessary to have to say in this court that the determination of matters here brought up from an inferior jurisdiction, must be had upon the record plus such matters as the court may take judicial notice of or have judicial knowledge of. While much that is in the brief of the learned counsel for the seamen as contained from pages 4 to 25 inclusive, is matter of common knowledge or of general history, yet it is respectfully submitted that a great mass of it is matter entirely *dehors* not only the record, but also any permissible idea of common knowledge or history. I do not intend to attempt to follow the gentleman in his disquisition, but I think I may fairly characterize it by drawing attention to certain parts of it that illustrate how far the zeal of advocacy has led counsel

afield. Where, for example, do we get the information, either as a part of contemporary history or matter of such common knowledge as that this court judicially knows it, that the abolition of arrest for desertion is a "thorn in the flesh" of the foreign ship owner; or (still more flagrantly) that once these terrible foreigners get their deserting seamen back in their clutches, they are inflicting heavy sentences on them; or that "to their shame" they are now ("they" referring, of course, to the foreign ship owners) "appealing to the unscrupulous officers of municipal governments to harass the seaman by prosecutions on charges real and imaginary when he has left the ship?"

(Mr. Howard's Brief, p. 13).

I also respectfully commend to the court's attention as subject to the same suggestion, and as being, in addition, rather a fine piece of imaginative writing, the first paragraph on page 15 of the brief of leading counsel for the seamen, in which the suggestion is made that the "Titanic" disaster and similar sea horrors have come from a turning away from the sea of "the high spirited men of the free peoples of the earth."

Little direct aid is given the reaching of a proper determination of this cause by a discussion of such matter, and the purpose of drawing attention to it is to show how the mystery and fascination of the sea seem to becloud the minds of those who undertake to present questions dealing with it, and so make of a brief a fascinating marine romance rather than a dry legal discussion of the issues—or perhaps counsel felt that otherwise, to adopt the language of Pooh-Bah, his story would have been "a bald and unconvincing narrative."

There is no dispute in this case as now presented to this court, over the construction of Section 4 of the present Seamen's Act (the half-wage section), the controversy that was raised over that having been terminated by the decision of the Circuit Court of Appeals for the Fifth Circuit in favor of the construction insisted on by the seamen. The controversy here depends upon the application, to the facts in this case of the eleventh section of the said Act (the advancements section). This section is dealt with in the last three pages of the brief of the leading counsel for the seamen in this case, contained on pages 24-5 of the brief, and there set out is an argument seemingly more formidable than the facts justify, because of an inadvertent omission of, as I see it, vital words from a quotation purporting to set out the Act as it now is. I say an inadvertent omission because I know well personally the learned counsel, and know ~~how~~ to be incapable of a wilful effort to mislead the court.

The argument is this: That subsection (e) of Section 11 of the Seamen's Act (which is the sub-section in which occurs the language making the section applicable to foreign vessels) as contained in the Act passed by the 62nd Congress, but which failed to become law because of failure to receive the President's signature, read thus, as to the matter under discussion:

"That this section shall apply as well to seamen engaged in ports of the United States for service on foreign vessels as to seamen employed on vessels of the United States. * * * ."

That this language was an amendment to the language of the sub-section as originally proposed, the sub-section as originally proposed having read:

"That this section shall apply as well to foreign vessels as to vessels of the United States * * *."

And that the present Act has gone back to the original language of the bill as introduced in the 62nd Congress, before the said amendment was made to it. The language of the present Act is thus quoted in capital letters on p. 25 of Mr. Howard's brief (I now quote Mr. Howard's brief):

"At the next session the 63rd Congress passed the bill in its present form and the President signed it, and it is respectfully submitted that by changing this provision of the bill so as to make it apply 'AS WELL TO FOREIGN VESSELS AS TO VESSELS OF THE UNITED STATES' instead of merely (here is quoted the subsection as it was in the Act passed by the 62nd Congress) the Congress showed beyond a doubt that the purpose of the law was to prohibit the advance to the full extent for which I have contended * * *."

The misquotation that I have drawn attention to consists of the capitalized purported quotation above of the language of the present Seamen's Act. The vital words omitted therefrom, without stars or punctuation mark to indicate omission or break the sense, are the following: "While in waters of the United States." The full quotation, then, is as follows:

"(e) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States * * *." (My emphasis).

It will thus be seen that the contrast and argument

of my learned friend is deprived of all its force, for not only did Congress not pass the Act in the language contained in the said brief for the seamen, but, as I have heretofore expressly pointed out in this brief and commented on, in express terms made this advancements section applicable to foreign vessels only while in waters of the United States. It is submitted that one may abandon the clear and strong argument of Judge Brown in the **State of Maine** and the cogently and strongly put argument of Judge Grubb for the Circuit Court of Appeals below in the instant case, and confidently ground the correctness of the holding here sought to be reviewed, upon this express restriction by Congress of the scope of the advancements section of this Act. Such construction of the Act not only does not "fail to give to the clear language of the Act, which is unambiguous, its ordinary meaning" (Mr. Howard's brief, p. 26), but on the contrary, does follow the plain meaning of the words, and I feel quite content to adopt as authorities for this construction, those cited by the learned counsel for the seamen (Mr. Howard) on p. 26 of his brief.

If I be correct in the foregoing, it matters not whether the expressed grounds, on which the learned Circuit Court of Appeals for the Fifth Circuit based its decision, be right or wrong. But, it is earnestly submitted, the learned court's argument is sound. I do not feel that I can add in support thereof anything to what is hereinbefore in this brief contained and the excellent statement in Judge Grubb's opinion for the court, except to reply to the attacks made upon it by the leading counsel and the associate counsel for the seamen in their respective briefs. The leading counsel (Mr. Howard) relies upon **United States vs. Twenty-Five Packages of Panama Hats**, 231 U. S., 358, to sustain his idea that we are wrong in using the criminal portion

of the advancements section, to buttress our argument. It is respectfully submitted that an examination of this case will demonstrate its lack of value for the end sought. The facts were that a consignor of Panama hats "falsely and fraudulently undervalued" them in his invoice at the place of shipment, which was without the United States, and sent them to the Port of New York where they were not entered, but were discharged from the ship and placed, under provisions of law to take care of merchandise brought in but not yet entered, in what is known as a General Order warehouse. They were never entered, nor was there any attempt to enter during a year's time, which was the time allowed by law for goods to remain in such warehouse. The United States then libelled the said goods for breach of an Act which provided, so far as apposite to the case under discussion, as follows:

"That if any consignor * * * * * shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, * * * * * or shall be guilty of any wilful act or omission by means whereof the United States shall or may be deprived of the lawful duties * * * * * such merchandise, or the value thereof to be recovered from such person or persons, shall be forfeited, * * * * * and such person or persons shall, upon conviction, be fined—or imprisoned—or both, in the discretion of the court."

Tariff Act of Aug. 5, 1909, c. 6, 36 Stat., 11, 97 (and see quotation therefrom set out on pp. 359-60 of 231 U. S.).

It will be noted that the action was against the res itself.

What counsel for the seamen suppose to be the analogy between that case and this one, is that in the Panama Hat case it was argued that the goods could only be forfeited for the same acts that would support an indictment, and that as the consignor could not be prosecuted in the United States for making a false invoice abroad, the goods could not be forfeited by an action against the goods in the United States. The defect, in the supposed analogy, is this: There, was a conspiracy to defraud the United States by shipping into them dutiable goods with a false statement of their value contained in the invoice so as to reduce the amount of duty to be paid. This whole transaction was indubitably a continuing one from its inception at the making of the false invoice abroad to its attempted consummation by the vessel's discharge of the goods in the United States. While this continuing effort to defraud is still in progress the res, which was the instrument of the attempted fraud, comes within the physical jurisdiction of the United States by coming within its territorial limits. The statute authorizes its seizure and forfeiture under such circumstances.

In the instant case, the lawful advancement of wages in Great Britain by a British master of a British vessel to his seamen, is in no possible sense a part of any conspiracy to defraud the United States of anything, or to evade our navigation laws, but, on the contrary, was in the pursuit of the usual and customary practice pursued in the ports of Great Britain, as is expressly shown by the agreed statement of facts, second and third paragraphs, on p. 19 of the record.

Nor was such advance payment in any sense a continuing act. At once upon its making it became a com-

pleted and accomplished thing; begun, done and finished in one transaction and at one place.

Nor is there any such instrumental *res* come within the jurisdiction and subject to seizure as in the **Panama Hat case**. The ship certainly is not.

It would seem, therefore, that the analogy wholly fails. It fails also in another particular. As the learned court below clearly points out, there is nothing whatever morally wrong in advancing a man some portion of his wages before he has earned it. On the other hand, lying for the purpose of defrauding has never yet been condoned by any system of ethics (unless we should accept perhaps that of the Nations with which we are now at war) and is certainly, under our ethical code, *malum in se*.

The associate counsel for the seamen (Mr. Waguespack), addressing himself to the same idea here as Mr. Howard, though expressing it somewhat differently, does not seem to consider the **Panama Hat case** as sufficiently apposite to justify his citation of it, but instead relies on **United States vs. Freeman**, 239 U. S., 117 (erroneously cited in Mr. Waguespack's brief as 229 U. S.)

To this **Freeman** case the same observations hereinbefore just made (except, of course, as to the moral aspect) apply with equal force. It should seem reasonably plain that to "ship or cause to be shipped" a commodity from one place to another, is a continuing transaction, as held in the said case, until the thing shipped reaches its point of destination. In the **Freeman** case was present the same continuity of subject matter, falling under the ban of the statute, from the beginning point outside the jurisdiction to the ending within the jurisdiction—an element of fact completely lacking in the instant case.

The learned counsel apparently appreciates the

difficulty which confronts him here, for he ingeniously attempts to get away from it (p. 9 of Mr. Waguespack's brief) by suggesting this idea: That by the payment of advance wages there was caused to spring into being between the seamen and the master, the relationship of debtor and creditor, and that this relationship was a continuing one when the vessel entered United States waters.

One sufficient answer to this suggestion is contained in the agreed statement of fact on p. 20 of the record, fourth paragraph:

"That the master of the said ship Talus then (that is, at Mobile at the time of the demand that preceded this libel) paid to libellants a sum which, with prior and undisputed credits, and also with said advances at Liverpool, equalled or exceeded as to each libellant, the one-half of the wages thus earned * * * * *"

It thus appears that the libellants had earned, when the ship came into United States waters, more than the amount of the advance. Had this not been the case, the master would have paid them nothing. (See *The Meteor*, 241 Fed., 735). So the status of the seamen as debtors to the ship, had ceased before the vessel came into our waters.

But aside from this, the proposition is bad, anyway. The whole burden of Mr. Howard's brief, and much of Mr. Waguespack's brief, is that what is aimed at and sought to be prevented by the advancements statute, is not the reversal of the creditor-debtor status between the seaman and his employer—not the creation or the destruction, as between seaman and ship, of any status whatever—but the prevention of the evils that come from paying over

(either directly to the crimp or indirectly through the seaman) of a considerable part of the seaman's wages to crimps, sailor boarding house keepers and other evil-disposed persons who prey on the seamen in the ports. If this evil result happened at all, it happened and was over and done with when the ship left Liverpool, and in no sense continued across the water and into the United States.

In his second point (Mr. Waguespack's brief, pp. 10-11) the learned associate counsel for the seamen treats the matter here at issue as though it were a discussion of whether the advancements section should be declared bad in toto because containing a criminal provision that is bad, or whether the criminal part should be stricken out of the statute as bad ("unconstitutional" is the word that the gentleman uses) and the balance of the statute remain. But there is no controversy between us whatever upon any such point. I have at no time attacked the statute as unconstitutional in any particular, nor was it so declared by the learned Circuit Court of Appeals for the Fifth Circuit. The idea urged upon and accepted by the learned Circuit Court of Appeals, was that, in construing the statute, one must absolve Congress of any intention to do a vain thing, and that as it was vain for Congress to undertake to punish a matter lawfully done in another sovereignty, we must assume that the legislative subject matter had in mind by Congress was a subject matter within the sovereignty of the United States. In the very *Freeman* case relied on by the gentlemen, this court so express themselves touching Congressional action penalizing things done abroad:

"And yet all will concede that Congress did

not intend to do anything so obviously futile as to denounce as criminal an act wholly done in a foreign country * * * * *."

239 U. S., Opin. at 120.

And this "obvious futility" was one of the potent factors in the construction of the Act there under construction. The Act was Section 240 of the Criminal Code which makes it a punishable offense knowingly to:

" * * * ship or cause to be shipped from one State * * * * into another State, * * * * or from any foreign country into any State" the prohibited commodities.

See language of Act set out at beginning of the opinion on p. 119 of 239 U. S.

The question for determination was whether the phrase "to ship or cause to be shipped," embraced simply the act of delivery to the carrier; or whether it embraced as well the carriage. What happened was that the defendant delivered in Missouri to a carrier for carriage to and delivery in Kansas, the prohibited stuff (beer). He was indicted in Kansas. If the legislative intention was aimed at simply the delivery for shipment and not at the whole transaction, including the carriage, then the Kansas court had no jurisdiction. On the other hand, if the transaction was a continuing one and included the carriage, part of it was performed in Kansas, and the Kansas court had jurisdiction. In reaching the conclusion stated in the latter branch of the alternative, the court pursued this course of reasoning:

That the Act not only prohibits shipment from one State to another, but shipment from any foreign coun-

try into any State; that it must be that Congress intended the same sort of shipment both as to foreign countries and as to States; that as Congress could not denounce as criminal an act wholly done in a foreign country, it must have intended to denounce a continuing act, or all effect would be denied to that portion of the statute touching shipment from foreign countries; and that therefore a continuing act was intended. Is not this the same sort of reasoning indulged in by the learned Circuit Court of Appeals for the Fifth Circuit?

An excellent expression of the thought that I am imperfectly seeking here to put, is contained in the very interesting opinion of this court in **American Banana Company vs. United Fruit Company**, 213 U. S., 347. There is in that case, a very clear expression of the idea of mutually exclusive sovereignties that I have tried in this brief to emphasize and apply to the instant case, and then this statement of the law touching the construction of a statute, sought to be invoked there, as here, to reach matters done without the territorial jurisdiction of the United States:

"The foregoing consideration would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' (Citing cases). Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator may be subsequently able to catch. In the case of the present statute (the Sherman Act touching monopolies) the im-

probability of the United States attempting to make acts done in Panama and Costa Rica criminal, is obvious. Yet, the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned." (Opin. on p. 357).

The action there was brought by the appellant against the appellee to recover three-fold damages for an alleged monopolistic and complete restraint of trade in Panama and Costa Rica. There we have precisely the line of reasoning that I have attempted to urge here, and that was followed by the learned Circuit Court of Appeals for the Fifth Circuit, and a clear illustration of the fallacy of the argument of the learned District Judge (Ervin) drawn from the use of the words "in any case" in forbidding advancements, and absolving the ship "in no case."

And see *The Windrush*, 250 Fed. 180, at 183.

The third proposition asserted by the learned associate counsel for the seamen (Mr. Waguespack) is this: The learned Circuit Court of Appeals for the Fifth Circuit held that as the making of the advancements at Liverpool involved no moral turpitude, but was *malum prohibitum* only, and was valid in Great Britain, it will be held valid here. This was in response to an insistence by the seamen that the statute, if not directly applicable to the advances here under discussion, yet evidences a general policy against advances, and that consequently our courts should not recognize them. The holding of the learned Court of Appeals is

now attacked in this court and the insistence below reasserted, relying especially on *The Kensington*, 183 U. S., 263 (erroneously cited by counsel as 188 U. S.) That was an action by passengers to recover for baggage destroyed by the carrier's negligence in stowing. The tickets, treated as the contracts of carriage, contained stipulations relieving the carrier of liability for negligence; and also declaring that the contract was Belgian, and should be governed by the Belgian law, which permitted a carrier to stipulate against liability for his negligence. This court held that as it has for many years been the established public policy of this country to hold void all efforts of carriers to stipulate against liability for negligence, and as this contract offended that policy, it could not be enforced in our courts.

But does the instant case fall within that doctrine? What public policy does the British master violate when he lawfully advances money to his crew in Great Britain? To repeat and apply a pregnant sentence from the quotation from *The Kensington*, set out on p. 13 of Mr. Wagnespach's brief:

"The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion."

As the learned Circuit Court of Appeals points out (Rec., p. 31) what is our policy is exhibited solely by this section and its predecessors, which apply only to acts done in our ports. Where, therefore, are we to find the "existence of the rule"; from what deduce it? That the mere existence of the statute is insufficient, is rather strikingly illustrated in the famous case of *The Antelope*, 10 Wheaton, 66; and in *Northern Pacific R. Co. vs. Babcock*, 154 U. S., at 198, this court quotes

approvingly from the Supreme Court of Minnesota, as follows:

"But it by no means follows that, because the statute of one State differs from the law of another State, therefore it would be held contrary to the policy of the laws of the latter State * * * . To justify a court in refusing to enforce a right of action which accrued under the law of another State, because against the policy of our laws, it must appear that it is against good morals or natural justice, or that, for some other such reason, the enforcement of it would be prejudicial to the general interests of our own citizens.' "

But, the gentleman says, the recognition of advancements abroad would come within the last clause of the quoted matter, in that such recognition would "operate injuriously against the general interest and policy of our citizens." (Brief, p. 12). How? The brief of the seamen's leading counsel teems with praise of our enlightened navigation laws that make American ships, he says, the best ships; for the care, comfort, safety and protection of the seamen; that sail the seas. Not the least of these blessings, say my friends, in substance, is the protection afforded by the prohibition of advancements. If this be true, will not the construction that we urge (if it really will have any appreciable effect, one way or the other, on the American merchant marine, which may be doubted) rather have a beneficial effect on our own shipping than the reverse? Looking with the most kindly eyes on this contention for the seamen, I deny with some confidence the statement on p. 13 of Mr. Waguespack's brief, that it is "manifest" that the construction adopted by the learned Circuit Court of Appeals below would operate injuriously against the interests of our own seamen.

See *The Windrush*, 250 Fed., 180, at 183.

The last suggestion of the learned associate counsel for the seamen is made here for the first time, and is not made by the leading counsel—no doubt for the quite sufficient reason (apparently overlooked by Mr. Waguespack) that it is expressly foreclosed by the agreed statement of facts, the last paragraph of which (Rec., p 20) reads thus:

"That the amounts found by the District Court to be due and set forth in its decree of May 26th, 1917, are in all cases correct, if said District Court was correct in holding that the said advances at Liverpool should not be deducted from the said one-half wages; if the said District Court erred in said holding, then that the proper decree would have been one dismissing the libel as to all libellants." (My emphasis).

Even if this were not the case, however, the gentleman's position, it is submitted, is untenable and unsupported by authority. The uniform current of authority is that by the general maritime law a seaman who wrongfully and wilfully leaves the ship during the contracted period of service, with the intention not to return, is a deserter, and forfeits his wages, and it is quite immaterial what his motive may be if there be not in fact a legal justification of his action. If he chooses to gamble on his counsel's construction of a statute, it does not lie in his mouth to complain if that construction be against him.

See *Cloutman vs. Tunison*, Fed. Case 2907 (1 Sumner, 373). Decision by Story, J., sitting on Circuit).

The Mary C. Conery, 9 Fed., 222, 223.

The Union, Fed. Case No. 14,347, pp. 537, 539.

And see the very numerous cases in notes 9 to 12, inclusive, to Section 8380 of the Compiled Statutes of 1916. (7 U. S. Compiled Statutes 1916 pp. 8895 to 8900), defining desertion and describing under what circumstances a wilful leaving of the ship's service without the *animus revertendi*, is justifiable. Roughly stated, there must be a dangerous condition of the ship, either as a whole or as to the seamen's quarters; or a failure to furnish food fit to eat, or a deviation from the contracted voyage and an undertaking of a voyage not contracted for.

In conclusion, it is submitted that whether we view this statute and its construction solely in the light of the language used, expressly confining it in its application to foreign vessels "while in waters of the United States"; or construe it with the aid of the reasoning derived from the penalty provision and the clearance provision and the general, fundamental doctrine of the law of Nations, with reference to national sovereignty; in either event we are irresistibly drawn to the conclusion that the construction of the statute by the learned Circuit Court of Appeals for the Fifth Circuit, is correct and should be here affirmed.

One final thought: Here are contracts of shipment lawfully made between persons who are not our citizens, made within the territorial jurisdiction of a nation that is not only friendly in the legal sense, but is actually now engaged with us as a brother in arms in a titanic struggle with the forces of anti-civilization, and made with reference to service upon a ship which is a part of the merchant marine of that nation—the nation whose warships are performing right now

so important and valuable a part in the marvelously successful sea transport of our troops to French soil. As a part of those contracts of shipment, advances were made which were not forbidden by the laws of Great Britain, but were valid where they were made—in Liverpool. There is nothing whatever inherently wrong or immoral in the payment of such advancements. And yet this court is asked to tear down and in part destroy or deny validity to these contracts lawfully made and acts lawfully done, where made and done, by persons *sui juris* and beyond the territorial jurisdiction of the United States. Leaving aside the question of the competency of Congress to validly denounce such contracts and actions and assuming for the moment that the Congress might do so; and leaving aside the cogent reasons for thinking that Congress did not attempt to do so, that I have heretofore in this brief tried to express; there is still this additional reason impelling toward the construction urged upon and taken by the learned Circuit Court of Appeals for the Fifth Circuit: Liberty of contract—the right to contract as one will so long as there is not an infraction of public morals, public policy, public health or express statute—is one of the valued liberties of mankind, and a very important part of the ordinary, daily administration of municipal law is taken up with the enforcement of rights growing out of the notion of the sanctity of contracts. Should there be any doubt as to construction, must not that doubt be resolved in favor of upholding the contract?

Respectfully submitted,

PALMER PILLANS,

Proctor for the "Talus"

I acknowledge service of the foregoing brief this
October 3rd, 1918

(Sgd.):

ALEX T. HOWARD,
Proctor of Record for Petitioners

NO. 100-10000

Supreme Court of the United States

OCTOBER TERM, 1917

ERIK SANDBERG ET AL.
(Plaintiffs)

JOHN McDONALD, Chairman of the Board of Directors
(Defendants)

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS

W. A. WARDEN

Supreme Court of the United States

OCTOBER TERM, 1917

ERIK SANDBERG ET ALS.,
(Libelants) Petitioners,

against

JOHN McDONALD, Claimant of the British Ship *Talus*,
(Defendant) Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

SIRS:

PLEASE TAKE NOTICE that the annexed supplemental brief in support of the application for a writ of *certiorari* to the United States Circuit Court of Appeals for the Fifth Circuit, will be submitted to the Supreme Court of the United States at the opening of the court on the *25th* day of March, 1918, or as soon thereafter as counsel can be heard.

Dated, March *22nd*, 1918.

W. J. WAGUESPACK,
Of Counsel.

To

JOSEPH N. MCALEER,
J. H. KIRKPATRICK,
PALMER PILLANS,
Proctors for Defendants,
Mobile, Alabama.

M. V. HANAW,
Proctor for Defendants,
Mobile, Alabama.

Supreme Court of the United States

OCTOBER TERM, 1917

ERIK SANDBERG ET ALS.,
(Libelants) Petitioners,

against

JOHN McDONALD, Claimant of the British Ship *Talus*,
(Defendant) Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*.

We think the record presents a case which warrants the granting of a writ of *certiorari* for the following reasons:

FIRST. Because the construction placed by the Court of Appeals upon Section 11 of the Seamen's Act of 1916, as to payments of wages in advance by foreign ships to foreign seamen in foreign ports, as applied to such foreign ships when they enter the ports of the United States, involves in effect the constitutionality of the statute, in that,

in order to reach the decision which was rendered in this case, the Court of Appeals eliminated such advances from the operation of the statute, as not being within the intent of Congress, upon the ground that the statute would otherwise be of doubtful constitutionality.

SECOND. Because, apart from the constitutional question involved, which we think would be sufficient to warrant the granting of the writ, the Court erred, we think, in its construction of the statute for the following reasons:

In that the Court holds that the statute cannot be construed to apply to advances made to foreign seamen who shipped in foreign ports, whenever said ships have entered upon the waters of the United States, because the imposition of a criminal penalty for the making of such advances upon foreign soil, which is beyond legislative power, would make a construction of the statute as applicable to such advances of doubtful constitutionality, whereas, we think, the construction of the statute by the inclusion of such advances is not only within the intent of the statute, but is, under the rule of construction enunciated in *United States vs. Freeman*, 229 U. S. 117, within legislative authority.

FIRST POINT.

The constitutional question suggested by the Court of Appeals in its construction of the statute, was not raised by the pleadings, was not passed upon by the District Court, and, therefore, could not be brought up to this Court by appeal.

But, the constitutional doubt in the minds of the Court, the doubt as to whether Congress had the power to impose a penalty upon the master of foreign vessels after the vessels had entered the ports of the United States, for payments of advance wages in foreign ports, is the basis upon which the statute was construed against the intent to include such advances. The case, therefore, presents the aspect of a final decision of a Court of Appeals in which a constitutional point forms the basis upon which the statute had been construed and in which a part of the statute has been eliminated on the ground that it is doubtful whether Congress had the power to include it. In other words, while this Court is vested with **exclusive** appellate jurisdiction over constitutional questions, a very important constitutional question in which all the shipping interest of the world is concerned forms here, in effect, the basis of a final decision of a Court of Appeals. We think, therefore, that upon that ground, a writ of *certiorari* to review this final decision, should be granted as being essentially within the reasons for which Congress vested this Court with the power and discretion to issue such writs, apart from the fact that it is so important that there should be uniformity of construction of all the statutes of the United States and especially of this statute, which is new and which has never been construed before.

SECOND POINT.

The intent that Section 11 should apply to foreign vessels when they enter into the ports of the United States is manifest, for the statute provides that any master or owner of a foreign vessel who has violated its provisions, shall be liable to the penalty.

The statute reads:

SEC. 11. (a) "That it shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, etc. * * * Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine, etc. * * * The payment of such advanced wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel suit or action for the recovery of such wages.

(e) "That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of any vessel of the United States would be for similar violation."

It is certain that Congress did not attempt to denounce as criminal an **act** wholly done in a foreign country such as would be the **act of paying** advance wages. The statute, therefore, must be given such a construction as will accomplish the purpose of its enactment. But the purpose which Congress had in view was evidently to prohibit the entry into the ports of the United States of vessels with seamen who, having been paid advance wages, stood in a state of continuous involuntary servitude, to the end that discrimination against American seamen and American shipowners, who are bound by the provisions of the law against the payment of advance wages, might be avoided. What Congress wished to do was to subject the foreign master and the foreign seamen, as soon as the vessel came within the jurisdic-

tion of the United States, to the same laws to which the American masters and the American seamen were subjected. It is, therefore, evident that the purpose of the clause as to foreign vessels was not to prohibit **the act itself** of **paying** advance wages upon foreign soil, but, to prohibit the **entry** of vessels into our ports with seamen affected, tainted, with the **continuous** condition of involuntary servitude which was established by these payments and which **entered with them into our ports** when they came into competition with American seamen.

That was the evil to be remedied; but, this Court has said that:

"A guide to the meaning of a statute is found in the evil which it is designed to remedy, as gathered from contemporaneous events."

Trinity Church vs. United States 143 U. S. 457.

The construction placed upon the statute by the Court of Appeals, it is manifest, would defeat the purpose of its enactment and would open the doors to the evil which it was designed to remedy, while the construction for which we contend would accomplish the purpose of its enactment.

And such a construction is clearly within legislative powers under the rule adopted by this Court in the case of *United States vs. Freeman*, 229 U. S. 117.

In that case, which was an indictment under Section 240 of the Criminal Code, making it a punishable offense knowingly

"to ship or cause to be shipped from one State
 * * * or from any foreign country into any State
 * * * " any package of or containing intoxicating liquor of any kind, "unless such package be so labeled on the outside cover as to plainly show the name of the consignee," etc., * * *

although the word "**shipped**" was used in the statute, the Court read "**shipped**" as a **continuous** act whereby the transportation into a State is accomplished, and said:

"So, if its words permit, as we think they do, the statute must be given a construction which will cause it to reach both classes of shipments and thereby to accomplish the purpose of its enactment. (*United States vs. Chavez*, 228 U. S. 525, 33 S. C. Rep. 599.) This, we think, requires that it be construed as referring to the continuing act before indicated whereby the transportation into a State is accomplished, whether the package comes from another State or from a foreign country. In this view the completion of the offense will always be within a jurisdiction where the statute can be enforced."

Applying that rule of construction to this case we think that the clause of the statute which imposes a criminal penalty upon the master of the vessel, who has violated its provision by entering the waters of the United States while the relation of debtor and creditor established by the payment of advance wages on foreign soil **continues to exist**, is within the scope of legislative authority.

The reprobated criminal penalty clause of the statute being the heart of the brilliant and masterly argument of the Court of Appeals, if your Honors should take our view, it is patent that the whole argument must fall.

We respectfully submit, therefore, that for the reasons herein stated, and because there has been as yet no authoritative, no universally authoritative, construction of this act, which is a new act, the writ should be granted.

Respectfully submitted,

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